

P.E.R.C. NO. 80-157

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DENNIS TOWNSHIP BOARD OF EDUCATION,

Petitioner,

- and -

Docket No. SN-80-109

DENNIS TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Chairman denies the Board's request for a permanent restraint of arbitration realting to the placement of teachers on the salary guide. Consistent with prior Commission decisions, the Chairman concludes that N.J.S.A. 18A:29.9 does not preempt negotiations regarding placement on a salary guide and that this is a compensation issue which can be resolved through the utilization of the grievance/arbitration mechanism.

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Appearances:

For the Petitioner, Loveland, Garrett & Russell, Esqs.
(Mr. John G. Himmelberger, Jr., on the Brief)

For the Respondent, Selikoff & Cohen, P.A.
(Mr. John E. Collins, on the Brief)

DECISION AND ORDER

On March 5, 1980 the Dennis Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the Board and the Dennis Township Education Association ("Association") was within the scope of collective negotiations and therefore legally arbitrable. The parties agreed to suspend the relevant arbitration proceeding pending a decision on this Petition. The Board and the Association filed briefs concerning their respective contentions in this matter, all of which were received by April 9, 1980.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the Chairman the authority to issue scope of negotiations decisions when the negotiability of the issues(s) in dispute has been previously determined by the Commission and/or the State judiciary.

The relevant facts in this matter are not in dispute. The Board and the Association have negotiated a provision in their collective negotiations agreement which mandates in pertinent part that new teachers receive a maximum of five years credit on the salary schedule for service in an accredited private school.^{1/} On or about October 26, 1979 the Association filed a grievance alleging that the Board had failed to honor this contract provision in that it had not placed incoming teachers at the proper step on the salary schedule based on their years of experience in other school districts. The Board denied the Association's grievance and subsequently the Association filed its Request for Submission of a Panel of Arbitrators with the Public Employment Relations Commission.

The gravamen of the relevant grievance appears to be that certain teachers, when they came into the Dennis Township School District, were not given proper credit for prior years of teaching experience elsewhere and were therefore not placed on the proper step of the salary guide in effect as of the date

1/ Article 16.2 of the contract states the following:

The maximum of five (5) credit years for a fully certified teacher shall be given a teacher moving from a public school system or an accredited private school.

they were hired, in violation of the aforementioned contract provision. It is apparently uncontroverted that the starting salary of each individual teacher involved in the grievance had been agreed upon between the teacher and the representative of the Board before each such teacher signed his or her contract of employment.

In their respective submissions the Board and the Association in part discuss the effect the following statute (N.J.S.A. 18A:29-9) may have in this particular proceeding:

Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, the initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing Board of Education.

The Board contends that N.J.S.A. 18A:29-9 is a specific statute relating to a term and condition of employment, i.e. initial placement on a salary schedule, as defined in the Supreme Court decision State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), and that it was illegal for the parties to negotiate the aforementioned Article 16.2 of the contract. The Board asserts that the apparent effect of Article 16.2 is to compel the Board to place incoming teachers on the step on the salary guide commensurate with their experience up to five (5) years, even though a particular teacher may agree to be placed at a lower level. The Board maintains that inasmuch as N.J.S.A. 18A:29-9 requires that the initial placement of a new teacher on

the existing salary schedule "shall be at such point as may be agreed upon by the member and the employing Board of Education", the attempt of Article 16.2 to alter that procedure must be invalidated and the instant arbitration hearing restrained. Alternatively the Board argues that, even if Article 16.2 is deemed not to be inconsistent with N.J.S.A. 18A:29-9, it is unenforceable because it is ambiguous.^{2/}

The Association in its brief states that it is uncontroverted that absent specific preemptive legislation the initial placement of teachers on a salary schedule based on their prior teaching experience is a mandatorily negotiable subject. The Association submits that the Board has erred in its reading of the State Supervisory Employees decision. The Association maintains that it is not enough that a statute

^{2/} The Commission will not consider this particular argument of the Board in the scope of negotiations context. The New Jersey Supreme Court in Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn, 78 N.J. 144 (1978), discussed the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

speaking in the imperative; to remove a term and condition of employment from negotiations, that statute must also remove all discretion from a public employer. The Association submits that N.J.S.A. 18A:29-9 leaves much discretion to local boards of education concerning the initial placement on the salary guide of an incoming teacher and that negotiations, upon demand, must take place on this compensation issue. Alternatively, the Association asserts that insofar as N.J.S.A. 18A:29-9 may sanction a process of individual negotiations between new teachers and a board of education, it is antithetical to the basic purpose of the New Jersey Employer-Employee Relations Act.

After careful consideration of the parties' submissions and pertinent Commission and judicial decisions, the Chairman concludes that Article 16.2 relates to the placement of a newly hired teacher on a salary guide; a compensation issue which can be resolved through the utilization of the negotiated grievance/arbitration mechanism. In a Commission decision, In re East Orange Board of Education, P.E.R.C. No. 77-60, 3 NJPER 126 (1977), the Commission concluded that the first step of the teachers' salary guide, generally occupied by newly hired teaching personnel, was a mandatory subject for collective negotiations. The Commission in that decision cited the New Jersey Supreme Court decision Board of Ed. of the City of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973) in partial support of its decision in the East Orange matter. The Court noted, in pertinent part, that the Englewood Board of Education's

unilateral denial of tuition reimbursement being sought by a teacher as well as his application for placement on a certain step of a salary guide related to contract interpretations which "...would directly and most intimately affect the employment terms and conditions of the...[individual] involved without affecting any major educational policies." Id. at p. 8. The Court further noted that "[s]urely working hours and compensation are terms and conditions of employment within the contemplation of the Employer-Employee Relations Act. [These] matters along with physical arrangements and facilities and customary fringe benefits would appear to be the items most evident in the legislative mind." Id. at pp. 6 and 7.

In a subsequent Commission decision, In re Cinnaminson Twp. Board of Education, P.E.R.C. No. 78-46, 4 NJPER 79 (¶4039 1978), aff'd in part, rev'd in part, App. Div. Docket No. A-2682-77 (6/1/79), pet. for certif. den. 81 N.J. 341 (1979), the Commission specifically considered the issue of the potential preemptive effect of N.J.S.A. 18A:29-9 on the negotiability of the initial placement on the salary guide. The Commission determined that N.J.S.A. 18A:29-9 did not preempt negotiations concerning the placement on a salary guide of re-employed teachers who had been the subject of a reduction in force decision. The Commission in that matter clearly considered N.J.S.A. 18A:29-9 as being a general statute that could accommodate negotiations between a board of education and an employee organization

concerning the issue of placement on a teachers' salary guide.^{3/} The undersigned concludes that statutes such as N.J.S.A. 18A:29-9, which was enacted into law in 1958, nearly 10 years before the passage of the New Jersey Employer-Employee Relations Act, must be read in para materia with subsequent enactments. The undersigned's reading of the State Supervisory Employees Ass'n decision mandates a conclusion that N.J.S.A. 18A:29-9 cannot be read so as to preempt any negotiations concerning the placement on a salary guide of a newly hired teacher.

Separate and apart from the statutory interpretation issue, there are significant policy reasons why negotiations concerning placement of teachers on a salary guide should be mandatorily negotiable. To read N.J.S.A. 18A:29-9 as the Board does would enable a board of education and individual teachers to ignore the basic parameters of a salary schedule and to arguably place inexperienced first or second year teachers on higher steps of the salary guide than teachers who have been employed within the school district for many more years. This procedure could be extremely destructive in terms of its impact on the negotiations process and the harmony and stability the Act was designed to promote and would encourage the process of individual negotiations which directly conflicts with the philosophy

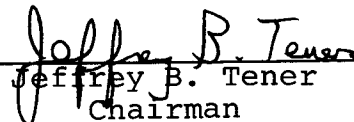
^{3/} Subsequently, the Appellate Division reversed the Commission's decision in Cinnaminson, but relied exclusively on its conclusion that procedural matters dealing with recall and retention rights of RIFed teachers are illegal subjects of collective negotiations in setting aside the Commission's decision on that issue.

of collective negotiations underlying the Employer-Employee Relations Act.^{4/}

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Dennis Township Board of Education's request for a permanent stay of arbitration of the grievance relating to the placement on a teachers' salary guide is denied. The grievance relating to this issue may proceed to arbitration if otherwise arbitrable under the parties' agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
June 20, 1980

4/ See Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970) and Red Bank Reg. H.S. Board of Education v. Red Bank Reg. Education Ass'n, 78 N.J. 122 (1978).