

P.E.R.C. NO. 98-98

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY REGIONAL  
HIGH SCHOOL DISTRICT NO. 1  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-128

AMERICAN FEDERATION  
OF TEACHERS, LOCAL 3417,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Union County Regional High School District No. 1 Board of Education for a restraint of binding arbitration of a grievance filed by the American Federation of Teachers, Local 3417. The grievance contests the Board's decision not to reappoint a baseball coach. The Commission finds that extracurricular appointments and retentions are mandatorily negotiable and that procedural claims related to non-renewals are also mandatorily negotiable. The Commission also holds that arbitration of this dispute is not preempted and that disputes over compliance with protections afforded by the Open Public Meetings act may be arbitrated.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Lawrence S. Schwartz, of counsel; Marc H. Zitomer, on the brief)

DECISION

On June 18, 1997, the Union County Regional High School District No. 1 Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the American Federation of Teachers, Local 3417. The grievance contests the Board's decision not to reappoint a baseball coach.

The Board has filed a brief, certification and exhibits. These facts appear.

The Federation represents the Board's teachers. Pursuant to N.J.S.A. 18A:13-51 et seq., the District dissolved on June 30,

1997. This dispute arose during the term of the parties' collective negotiations agreement effective from September 1, 1995 to August 31, 1997. Schedule E of the agreement lists extracurricular positions and stipends. The agreement's grievance procedure ends in binding arbitration.

During the 1995-1996 school year, teacher Rick Iacono was the head baseball coach, an extracurricular post. At the Board's February 17, 1997 meeting, the superintendent recommended that Iacono be reappointed for the 1997 spring season. The Board declined to approve that recommendation.

At the Board's March 4, 1997 meeting, the superintendent recommended a different person to be the head baseball coach. The Board approved that appointment.

On March 12, 1997, the Federation president filed a grievance alleging that Iacono's possible non-reappointment was discussed during a closed session of the Board without prior notice to Iacono. It asserted that the lack of notice violated Iacono's procedural rights. The grievance sought payment equivalent to the coaching stipend.

The superintendent and the Board denied the grievance and the Federation demanded arbitration. This petition ensued.

The Board argues that the grievance asserts a violation of the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-1 et seq., as construed in Rice v. Union Cty. H.S. Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978). The Board

contends that the issue framed by the grievance is limited to whether the the OPMA was violated by the manner in which it considered Iacono's reappointment as head baseball coach for the 1997 season. It asserts that arbitrators have no jurisdiction to decide cases involving alleged OPMA violations. It also notes that the grievance does not identify any contract article as having been violated and accordingly there is nothing for the arbitrator to decide.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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.

[Id. at 154]

Thus, we do not consider the Board's argument that the grievance is not contractually arbitrable, nor do we consider whether the contract affords any rights regarding coaching assignments.

Until 1990, extracurricular appointments and retentions were neither mandatorily negotiable nor legally arbitrable. Teaneck Teachers Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981).

But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

This statutory amendment expressly permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. We have thus held that non-renewals of coaches are legally arbitrable. See Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-29, 21 NJPER 391 (¶26240 1995); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Cinnaminson Bd. of Ed., P.E.R.C. No. 93-59, 19 NJPER 111 (¶24051 1993); Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991). Procedural claims related to non-renewals were mandatorily negotiable even before the 1990 amendments. See, e.g., In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26-27 (App. Div. 1977).

The Board does not dispute that the grievance addresses a procedural issue, but it asserts that an arbitrator cannot adjudicate an alleged OPMA violation. That act permits the public

and the press to have notice of and the opportunity to attend most meetings, including executive sessions, of public bodies, except where the public interest or individual rights would be jeopardized. N.J.S.A. 10:4-12(b)(8) provides:

b. A public body may exclude the public only from that portion of a meeting at which the public body discusses:

(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matters or matters be discussed at a public meeting.

In Rice, the Court construed the underlined passage and concluded that to give effect to the rights of affected employees to have personnel actions discussed in a public session, notice advising them of that option must be sent. 155 N.J. Super. at 73. The grievance asserts that the Board did not comply with Rice. The Board raises a statutory preemption issue, asserting that any dispute which alleges that the OPMA has been violated must be brought within 45 days in Superior Court. See N.J.S.A. 10:4-15; 16; 17.

Negotiations are preempted only if a statute or regulation fixes a term and condition of employment "expressly, specifically, and comprehensively." The statute or regulation must "speak in the imperative and leave nothing to the discretion of the public

employer." Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 19 N.J. 38 (1982). Statutes that address terms and conditions of employment can be incorporated by reference into agreements and disputes over the meaning of those laws can be resolved through binding grievance arbitration. See W. Windsor Tp. v. PERC, 78 N.J. 98, 107 (1978). Since procedures attendant to personnel decisions are mandatorily negotiable, a contract provision incorporating the protections afforded by the OPMA, as construed in Rice, would not be preempted. The enforcement provisions of the OPMA have not been held to be the exclusive method of securing compliance with that law. See Sukin v. Northfield Bd. of Ed., 171 N.J. Super. 184 (App. Div. 1979) (Commissioner of Education had jurisdiction to assess compliance with OPMA in the course of adjudicating disputes arising under education laws). We therefore hold that a collective negotiations agreement may contain the protections afforded by the OPMA as construed in Rice, and that disputes over compliance with such notice provisions may be arbitrated.

ORDER

The request of the Union County Regional High School District No. 1 Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998  
Trenton, New Jersey  
ISSUED: January 30, 1998