

P.E.R.C. NO. 2017-67

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOROUGH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-037

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Board of Education for a restraint of binding arbitration of a grievance alleging that the Board placed the grievant on the wrong step of the salary guide, finding that placement on a salary guide is mandatorily negotiable.

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, Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC, attorneys (Anthony P. Sciarrillo, on the brief; Stephen J. Christiano, on the brief)

For the Respondent, (Brian R. Furry, UniServ Field Representative, on the brief)

DECISION

On March 24, 2017, the Middlesex Borough Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Middlesex Education Association (Association). The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) by placing the grievant on the wrong step of the salary guide.

The Board filed a brief, exhibits, and the certification of the District's Director of Guidance. The Association filed a brief and the certification of its President. These facts appear.

The Association represents all full-time and part-time certified and all non-certified personnel, with certain exclusions as set forth in Article 1 of the CNA, employed by the Board. The Board and the Association are parties to a CNA in effect from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration.

Article 10 of the CNA, entitled "Teacher Employment," provides in pertinent part:

10.4 Teachers employed prior to February 1<sup>st</sup> of the calendar year shall be placed on the proper step of the salary guide and shall be entitled to the increment normally granted as of September 1<sup>st</sup> of the next succeeding school year.

The Board hired the grievant to work as a school counselor commencing on February 1, 2016. Prior to his start date, the grievant was permitted to acclimate himself to the new position by shadowing the counselor he was replacing. The grievant was paid per diem for these five transition days.

According to his employment contract, the grievant agreed that his salary for the remainder of the 2015-16 school year (i.e., February 1, 2016 through June 30, 2016) would be "\$53,414.00 prorated" based upon placement on "Step 4, MA, FTE 1" of the salary guide. Subsequently, the grievant agreed that his salary for the 2016-17 school year would remain the same and that he would not advance on the salary guide pursuant to the parties' CNA. The District's Director of Guidance certifies that the

grievant did not object to these terms and conditions of employment when they were explained and discussed with him.

On November 21, 2016, the Association President and Vice-President met with the District's Superintendent of Schools and Business Administrator to discuss the grievant's placement on the salary guide. The Association President certifies that the Board agreed that the underlying grievance "would commence . . . at Level 3."

On December 19, 2016, the Association filed a "Level 3 Grievance" on behalf of the grievant claiming that the Board violated the parties' CNA by placing the grievant on the wrong step of the salary guide. The Board denied the grievance at each step of the process. On January 23, 2017, the Association demanded binding arbitration (AR-2017-327). This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City POBA*, 154 N.J. 555, 574-575 (1998).

The Board argues that the clear language of the CNA demonstrates that the grievant is not entitled to advance on the salary guide given that he commenced employment with the Board on February 1, 2016. The Board also argues that the Association failed to comply with certain requirements set forth in the CNA's grievance procedure - specifically, that the grievance was untimely and filed at the wrong step.

The Association argues that compensation and salary guide placement are mandatorily negotiable terms and conditions of employment. The Association maintains that all of the issues raised by the Board are irrelevant to a scope determination because they pertain to substantive and/or contractual arbitrability.

The New Jersey Supreme Court has held that "[t]he prime examples of subjects that . . . [are mandatorily negotiable] are rates of pay and working hours." Local 195, 88 N.J. at 403; accord Bd. of Educ. v. Woodstown-Pilesgrove Reg'l Educ. Ass'n, 81 N.J. 582, 589 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6 (1973). Moreover, it is well-settled that "placement on [a] salary guide . . . is a term and condition of employment and . . . within the scope of negotiability." Belleville Educ. Ass'n v. Belleville Bd. of Educ., 209 N.J. Super. 93, 98 (App. Div. 1986); accord Franklin Bd. of Ed., P.E.R.C. No. 2017-40, 43 NJPER 300 (¶84 2017); see also, N.J.S.A. 18A:29-9 ("initial place[ment] on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education").

Accordingly, we decline to restrain arbitration in this case. The Board has raised issues pertaining to contractual and procedural arbitrability that are beyond the purview of a

negotiability determination. See, e.g., University Hospital (UMDNJ), P.E.R.C. No. 2017-34, 43 NJPER 236 (¶73 2016).

ORDER

The request of the Middlesex Borough Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni, Boudreau and Wall were not present.

ISSUED: May 25, 2017

Trenton, New Jersey