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Appellate Court Rules that Salary Guide Placement is Governed by the Collective Bargaining Agreement

By Anthony P. Sciarrillo

The New Jersey Appellate Division recently affirmed a Public Employment Relations Commission (“PERC”) decision that denied the Manalapan-Englishtown Regional School District’s Board of Education’s (“Board”) request to restrain binding arbitration of a grievance filed by the Manalapan-Englishtown Education Association (“Association”) on behalf of Charlotte Klumb (“Klumb”). Klumb was a reinstated teacher in the District who returned to work following an ordinary disability retirement. The Board also lost its appeal of an order from the Law Division that denied the Board’s motion to vacate an arbitration award placing Klumb on the top step of the salary guide.

By way of background, Klumb was an elementary school teacher in the Manalapan-Englishtown Regional School District. In 1985, she requested, and was granted, multiple leaves of absence to treat her disabilities (alcoholism and mental health issues). Eventually, the District placed her on voluntary sick leave disability, and the Teacher’s Pension and Annuity Fund (“TPAF”) approved her disability application. In 1998, TPAF found that Klumb’s disability had diminished enough that she could resume her duties as a teacher and ordered the District to rehire her. The District refused. The Supreme Court held that once Klumb recovered from her disability and was able to return to teaching, the District was not required to dismiss another employee or create a new position, but was required to reinstate Klumb to the next available opening in the position from which she retired and for which she is qualified. The Court did not address the amount of back pay or Klumb’s placement on the salary guide. See *Klumb v. Board of Educ.*, 199 N.J. 14 (2009).

The Board rehired Klumb for the 2005-2006 school year as a seventh-grade study skills language arts teacher and placed her on step 6 of the master’s salary guide. Klumb challenged her placement on the guide and an arbitrator ruled that she should be placed at the top step of the master’s degree salary guide. The Board then contested the arbitrator’s decision and filed a motion to vacate the arbitration award. That motion was denied and the Board appealed. (cont’d ➔)

The Board argued that while an employee's placement on a negotiated salary guide generally is mandatorily negotiable and legally arbitrable, the specific issue of Klumb's placement on the guide is not negotiable or arbitrable and the arbitrator lacked jurisdiction to decide the issue. The Appellate Division disagreed, stating that salary guide placement is governed under the parties' collective bargaining agreement (CBA) and any disputes pertaining to salary guide placement should be resolved through the negotiated grievance procedures in the CBA.

The court also held that PERC has exclusive jurisdiction to determine whether the subject matter of a grievance was within the scope of the CBA and therefore arbitrable. A PERC decision is accorded deference by the court unless it is found to be unreasonable, arbitrary or capricious. The court held that there was nothing unreasonable, arbitrary or capricious about the PERC ruling that the salary guide placement was within the scope of the CBA and therefore arbitrable.

In the Board's appeal to the Law Division, the Board claimed that the arbitrator exceeded his authority because the case was filed after the expiration of the

time period for filing grievances in the CBA. The arbitrator applied the doctrine of equitable tolling and allowed the untimely grievance. The Law Division affirmed the arbitrator. The Appellate Division affirmed the Law Division, stating that the issue was one of procedural arbitrability and, as such, deference must be given to the judgment of the arbitrator as long as his decision and interpretation of the CBA is "reasonably debatable," which the court ruled it was.

This decision reaffirms the court's position that PERC decisions will be accorded deference by a court unless they are found to be unreasonable, arbitrary or capricious and that a court may vacate an arbitration award "[w]here the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made." *N.J.S.A. 2A:24-8(d)*.



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