

P.E.R.C. NO. 91-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST NEW YORK
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-22

WEST NEW YORK
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the West New York Board of Education's request for a restraint of binding arbitration of a grievance filed by the West New York Education Association. The grievance contests a teacher transfer. Given the Association's unrefuted account of the teacher's actions and the timing of the transfer, the Commission finds that this is predominately a disciplinary dispute.

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Appearances:

For the Petitioner, Kreiger & Ferrara, attorneys
(Joseph J. Ferrara, of counsel)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Karen L. Cayci, of counsel)

DECISION AND ORDER

On November 1, 1989, the West New York Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the West New York Education Association. The grievance contests a teacher transfer.

The parties have filed briefs and exhibits. These facts appear.

The Association represents the Board's teachers. The Association and the Board entered into a collective negotiations agreement effective from July 1, 1988 through June 30, 1989. The grievance procedure ends in binding arbitration.

On June 14, 1989, William Tarallo, a teacher, posted signs protesting the proposed layoff of teachers. His name apparently appeared in a newspaper article about the protests. On July 7, 1989, the Board, acting on the recommendation of its Superintendent, transferred Tarallo from P.S. No. 6 to another school. The Board states that it had received complaints concerning Tarallo and asserts that the transfer "was made in the best interest of the school district."

On August 14, 1989, the Association filed a grievance seeking the rescission of Tarallo's transfer. The grievance asserts that the transfer violated contract articles governing involuntary transfer procedures (Article 15), guaranteeing teachers their rights under state laws and the state and federal constitutions (Article 4, Sections A and B), protecting teachers against discipline without just cause (Article 4, Section C), allowing teachers to display Association pins or insignia (Article 4, Section E), and providing that personnel actions will be free from invidious discrimination (Article 34, Section D).

The Board denied the grievance and the Association demanded binding arbitration. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. 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 merits of the Union's grievance or any contractual defenses the Board may have.

The decision to transfer or reassign an employee is "preeminently a policy determination" and beyond the scope of negotiations. Local 195, IFPTE v. State, 88 N.J. 393 (1982). But transfer procedures are mandatorily negotiable. See, e.g., Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982); Local 195. To the extent this grievance asserts a violation of contractual transfer procedures (Article 15, Section A), it is mandatorily negotiable and arbitrable.

Additionally, disciplinary review procedures are mandatorily negotiable. N.J.S.A. 34:13A-5.3. Binding arbitration may be used as a means for resolving a dispute over a disciplinary determination if there is no alternate statutory appeal procedure to contest the particular discipline imposed. Bergen Cty. Law Enforcement Group, Superior Officers PBA Local No. 1342 v. Bergen Cty. Freeholder Bd., 191 N.J. Super. 319 (App. Div. 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. 5569-83T6 (3/14/86), certif. den. 101 N.J. 280 (1985); Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9

NJPER 360 (¶14158 1983), aff'd sub. nom. CWA v. PERC, 193 N.J. Super 658 (App. Div. 1984), certif. den. 99 N.J. 169 (1984). Thus a personnel decision that is generally not mandatorily negotiable may be subject to arbitration if its basis is predominately disciplinary. See Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986) (disciplinary reassignments arbitrable); Cape May Cty. Bridge Comm'n, P.E.R.C. No. 84-133, 10 NJPER 344 (¶15158 1984), aff'd App. Div. Dkt. No. A-5186-83T6 (7/9/85) (disciplinary transfer arbitrable); Eatontown Bd. of Ed., P.E.R.C. No. 89-101, 15 NJPER 261 (¶20109 1989) (disciplinary nonrenewal of bus driver's contract arbitrable); cf. Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87) (setting standard for determining if document is nonarbitrable evaluation or arbitrable reprimand).

Under all the circumstances, we hold that the employer could legally agree to submit this dispute to binding arbitration. The employer has not specified the nature of the complaints against Tarallo or elaborated on how the transfer serves the district's best interests. Given the Association's unrefuted account of Tarallo's actions and the timing of the transfer, we find that this is predominately a disciplinary dispute.

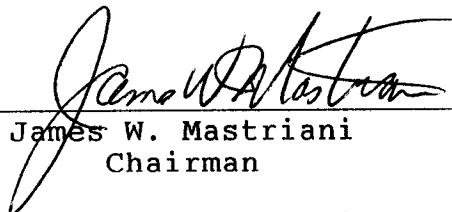
Also, no alternate statutory appeal procedure preempts arbitration. The only statute addressing transfers, N.J.S.A. 18:25-1, simply states that transfers can only be effectuated by a

majority vote of the full board. No substantive rights are granted transferred teachers, no statutory rights of appeal spelled out. Contrast N.J.S.A. 18A:6-10 and 18A:29-14 specifying respectively the rights and appeal procedures tenured teachers enjoy against dismissal and reductions in compensation and all teachers enjoy against increment withholdings without good cause.^{1/} The Appellate Division has consistently held that the Commissioner of Education's discretionary jurisdiction under N.J.S.A. 18A:6-9 does not constitute an alternate statutory appeal procedure within the meaning of section 5.3. See CWA v. PERC; E. Brunswick; Holland. We therefore hold that this grievance is legally arbitrable.^{2/}

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: April 19, 1991
Trenton, New Jersey
ISSUED: April 19, 1991

- ^{1/} Under N.J.S.A. 34:13A-26, disputes involving the withholding of a teaching staff member's increment for predominately disciplinary reasons are arbitrable.
- ^{2/} The statute prohibiting transfers of school employees for disciplinary reasons went into effect January 4, 1990. L. 1989, c. 269 (N.J.S.A. 34:13A-25). The new law empowers the Commission to determine whether a transfer is disciplinary and to issue an appropriate remedy.

Appendix

ARTICLE 4 Teacher Rights

A. Pursuant to N.J.S.A. 34:13A-1 et seq., the Board hereby agrees that every teacher of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations. The Board undertakes and agrees that it shall not directly or indirectly discourage, deprive or coerce any teacher in the enjoyment of any rights conferred by N.J.S.A. 34:13A-1 et seq., or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of membership in the Association and its affiliates, collective negotiations with the Board, or the teacher's institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

B. Nothing contained herein shall be construed to deny or restrict to any teacher such rights as the teacher may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

C. No teacher shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional opportunity without just cause. Any such action asserted by the Board, or agent or representative thereof, shall be subject to the grievance procedure herein set forth.

E. No teacher shall be prevented from wearing pins or other identification of membership in any educational organization or its affiliates.

ARTICLE 15 Involuntary Transfers and Reassignments

A. An involuntary transfer or reassignment shall be made only after a meeting between the teacher involved and the immediate superior, at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the transfer or reassignment at this meeting, upon the request of the teacher, the Superintendent shall meet with the teacher. The teacher may opt to have an Association representative present at such a meeting.

B. 1. In the event transfers are necessitated by pupil redistricting, the Superintendent will publish a list of positions available within the school system within sufficient time to enable teachers to seek voluntary transfers on the published list.

ARTICLE 34 Miscellaneous Provisions

D. The Board and the Association agree that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, or marital status.