

P.E.R.C. NO. 91-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TENAFLY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-6

TENAFLY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Tenafly Education Association against the Tenafly Board of Education. The grievance asserts that the Board must allow the child of a non-resident employee to attend Tenafly High School, an action which the Board contends is prohibited by an order of the Commissioner of Education. The Commission concludes that since the Commissioner of Education's order prohibits the relief sought here, binding arbitration is restrained.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(James L. Plosia, Jr., of counsel)

For the Respondent, Harold N. Springstead, attorney

DECISION AND ORDER

On July 24, 1990, the Tenafly Board of Education petitioned for a scope of negotiations determination. It seeks a restraint of binding arbitration of a grievance filed by the Tenafly Education Association. The grievance asserts that the Board must allow the child of a non-resident employee to attend Tenafly High School, an action which the Board contends is prohibited by an order of the Commissioner of Education.

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

The Association represents the Board's full-time custodians and maintenance employees. The parties entered into a collective negotiations agreement effective July 1, 1987 to June 30, 1989. The grievance procedure ends in binding arbitration.

The Board has a policy on School Admission. Section 6.1.2 provides:

Children of Board of Education employees may attend Tenafly schools at no tuition cost providing that there is space available and that the regular school program is appropriate for the student.

That policy has been in effect since at least the early 1960's. A separate policy concerning the admission of tuition-paying non-residents was adopted in 1982.

Felix Natal has been a custodian for the Board since July 1, 1988. Natal lives in Englewood. He is of Hispanic descent. In the spring of 1989, Natal asked that his son be allowed to enter Tenafly High School as a ninth grader the next fall. The superintendent granted this request.

While these events were unfolding, the Tenafly Board of Education, the Englewood Board of Education and the Englewood Cliffs Board of Education were parties to litigation before the Commissioner of Education. The litigation began when Englewood Cliffs, pursuant to N.J.S.A. 18A:38-13, sought to terminate its sending-receiving relationship with Englewood and to enter into a new sending-receiving relationship with Tenafly. Englewood contended that termination of its sending-receiving relationship would have a substantial negative impact on the racial composition of Englewood's pupil population and therefore violate N.J.S.A. 18A:38-13 as well as the New Jersey Constitution. It sought an order preventing any students living in Englewood or Englewood

Cliffs from attending Tenafly High School. Englewood asserted that it needed such an order to prevent the segregation of Dwight Morrow High School.

On July 11, 1988, the Commissioner issued his opinion. Englewood Cliffs Bor. Bd. of Ed. v. City of Englewood Bd. of Ed., C 193-88 (7/11/88). He denied the request of Englewood Cliffs to terminate its sending-receiving relationship with Englewood. He ordered the Tenafly Board to "cease and desist from admitting to its high school on a tuition or other basis any students who are residents of either Englewood or Englewood Cliffs."

When the Englewood Board learned that Natal's son was going to attend Tenafly High School, it moved before the Commissioner of Education for an order specifically prohibiting that attendance under the Commissioner's July 11, 1988 injunction. The Tenafly Board vigorously opposed that motion, pointing out that its policy on the attendance of employee children was different from its policy on tuition-paying non-residents, the policy which led to the 1988 injunction. The Association sought to intervene.

On September 6, 1989, the Commissioner of Education issued a decision on the Natal admission issue. He first denied the Association's motion to intervene. He then concluded that the language and purpose of his July 11, 1988 injunction precluded Natal's son from attending Tenafly High School. He therefore restrained the Tenafly Board from admitting him. The Board complied.

Appeals were taken to the State Board of Education from the July 11, 1988 order and the September 6, 1989 order.^{1/} On April 5, 1990, the State Board issued its decision. SB#37-88 (4/5/90), app. pending App. Div. Dkt. No. A-4912-89-T5. With respect to the July 11, 1988 order, it upheld the Commissioner's determination that Englewood Cliffs could not terminate its sending-receiving relationship with Englewood and concluded that, with certain exceptions immaterial here, no public school district could accept high school students who are residents of Englewood or Englewood Cliffs on a tuition basis or otherwise. With respect to the Tenafly Board's appeal of the September 6, 1989 order, it reserved judgment and directed that a briefing schedule be established. The Tenafly Board then withdrew its appeal.

After the Commissioner's decision and before the State Board's decision, the Association filed a grievance. It asserted that the Tenafly Board had violated its past practice of allowing non-resident employees to send their children to Tenafly High School and demanded that the Board admit Natal's son. The Superintendent reluctantly denied the grievance because of the Commissioner's order prohibiting the admission of Natal's son. The Board affirmed that determination. The Association demanded binding arbitration and this petition ensued.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a subject is mandatorily negotiable if:

^{1/} The denial of the motion to intervene was not appealed.

(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. [Id. at 404-405]

Tuition-free attendance for children of school board employees is a mandatorily negotiable subject. Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78, 83 (¶18036 1986); Pennsville Bd. of Ed., P.E.R.C. No. 81-125, 7 NJPER 247 (¶12111 1981). No education statutes or regulations preempt negotiations over such a policy. Id.

We would ordinarily end our analysis here. But we cannot because an order of the Commissioner of Education prohibits the very relief sought through binding arbitration. That unreversed order binds the Board. N.J.S.A. 18A:6-25. We cannot reconsider its merits.

In Hoboken Bd. of Ed., P.E.R.C. No. 82-118, 8 NJPER 363 (¶13166 1982), we confronted a similar situation. There the employee representative filed a grievance asserting that the school board had violated contractual procedures when it promoted an employee to vice principal. But the Division on Civil Rights had entered a conciliation order and a supplementary conciliation order requiring that employee's promotion. We concluded that these orders

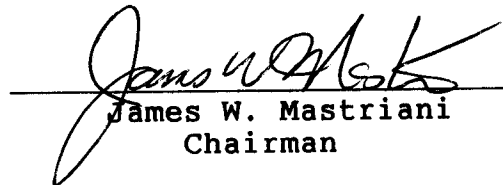
preempted any dispute arising from that promotion. We therefore restrained arbitration.^{2/}

Given the Commissioner's order, we are constrained to restrain binding arbitration over the demand that the son of Felix Natal be admitted to Tenafly High School.^{3/}

ORDER

Binding arbitration over the demand that the son of Felix Natal be admitted to Tenafly High School is restrained.

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 Reid abstained from consideration.

DATED: Trenton, New Jersey
December 17, 1990
ISSUED: December 18, 1990

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- ^{2/} The employee representative was allowed to intervene before the Division on Civil Rights in Hoboken, but not before the Commissioner of Education here. We do not consider whether the Association's motion to intervene was properly denied.
- ^{3/} Should the State Board's injunction be lifted on appeal, it would appear that the grievance would be legally arbitrable.