

P.E.R.C. NO. 2018-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLEASANTVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-039

PLEASANTVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Board's request for a restraint of binding arbitration of grievances alleging that two untenured non-certified employees were terminated without just cause. The district superintendent had recommended that the Board terminate the employees, but the Board voted not to. However, pursuant to the District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 et seq., the district State Monitor overturned the Board vote and terminated the employees. The Board argued that arbitration was preempted by the Accountability Act and that it could not defend the actions at arbitration because it was the State monitor, not the Board, that terminated the employees. The Commission rejects the Board's arguments, noting that the Accountability Act makes a State monitor's authority "subject to the education, labor, and employment laws" and a district's collective negotiations agreements.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLEASANTVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-039

PLEASANTVILLE EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, The Carroll Law Firm, LLC,
attorneys (Benjamin B. Brenner, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, on the brief)

DECISION

On April 7, 2017, the Pleasantville Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of two grievances filed by the Pleasantville Education Association (Association).^{1/} The grievances allege that the Board violated the parties' collective negotiations agreement (CNA) when it terminated the grievants, an instructional aide and a security guard, without just cause.

^{1/} An application for interim relief seeking a stay of the underlying arbitration was filed with the scope petition. To date, however, an arbitration hearing has not been scheduled and therefore the interim relief application has not been processed.

The Board filed a brief, exhibits, and the certification of its attorney, Benjamin B. Brenner, Esq. The Association filed a brief.^{2/} The Board also filed a reply brief. These facts appear.

Pursuant to the School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54 et seq. (Accountability Act), the Board has been subject to the authority of a State monitor since March 2007. With certain exclusions set forth in Article 1 of the parties' CNA, the Association represents all full-time personnel employed by the Board, including all non-supervisory professional certified staff, education support professionals, and support personnel. The Board and the Association were parties to a CNA in effect from July 1, 2012 through June 30, 2016. The grievance procedure ends in binding arbitration.

Article III of the CNA, entitled "Grievance Procedure," Section A, entitled "Definition," provides in pertinent part:

1. Grievance - A grievance is a claim or complaint by a member [of] the Association based upon an alleged misinterpretation or misapplication, interpretation, application or violation of this Agreement and administrative decisions or policies of the Board of Education related to terms and conditions of employment affecting an employee or a group of employees.

^{2/} The Association did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

Article 5 of the CNA, entitled "Employee Rights and Protection in Representation," Section D, entitled "Impact on Employment," provides in pertinent part:

No [Educational Support Professional] employee shall be reprimanded, reduced in rank, reduced in compensation, deprived of any form of salary increment, terminated, deprived of any form of occupational advantage or benefit, have his/her employment contract or status not renewed or not continued, or any other form of discipline without just cause. Any such action shall be subject to binding arbitration pursuant to N.J.S.A. 34:13A-29. No certified employee shall be disciplined, reprimanded, reduced in rank, or deprived of any professional advantage, without just cause. Any such action shall be subject to binding arbitration pursuant to N.J.S.A. 34:13A-29.

Grievant #1

Grievant #1 was an instructional aide employed by the Board. On October 11, 2016, the interim superintendent recommended that grievant #1 be terminated based upon her unauthorized use of school facilities and the activities of a dance organization that she coordinated, including failure to obtain authorization to solicit student participation in the activity and failure to demonstrate that the adults working with students had undergone criminal history background checks. The Board did not support the interim superintendent's recommendation, voting against termination at its October 11 meeting and failing to take a vote on termination at its November 15 meeting. On December 20, the

State monitor overturned the Board's decision and terminated grievant #1.

Grievant #2

Grievant #2 was a security guard employed by the Board. On January 17, 2017, the interim superintendent recommended that grievant #2 be terminated based upon a second inappropriate interaction that he had with a student, including a physical altercation. The Board did not support the interim superintendent's recommendation, voting against termination at its January 17 meeting. On January 19, the State monitor overturned the Board's decision and terminated grievant #2.

On February 3, 2017, the Association filed grievances on behalf of each grievant alleging that they were terminated without just cause. Both grievances were denied at every step of the process. On March 30, the Association filed Requests for Submission of a Panel of Arbitrators (AR-2017-397; AR-2017-398) on behalf of each grievant. 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 arbitration of the grievants' terminations has been preempted by the Accountability Act based upon the State monitor's authority to override the Board. Moreover, the Board maintains that it will be forced to defend

actions that it did not approve that were taken by the State monitor if arbitration is not restrained. The Board asserts that "arbitration . . . should be restrained as violative of public policy, and that the grievants be required to file a verified complaint alleging that the State monitor's actions were unlawful." In support of the latter argument, the Board cites Rankins v. Board of Educ. of the City of Pleasantville, 2012 N.J. Super. Unpub. LEXIS 2369 (App. Div. 2012).

The Association argues that just cause provisions are mandatorily negotiable and legally arbitrable. The Association maintains that a State monitor does not have the authority to interfere with the parties' CNA or their rights and responsibilities under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Commission has held that "[t]he disciplinary provisions of N.J.S.A. 34:13A-5.3 allow arbitration of mid-year terminations of board of education employees, except for employees who have tenure or must use an alternate statutory appeal procedure." Pleasantville Bd. of Ed., P.E.R.C. 2013-63, 39 NJPER 428 (¶138 2013); see also, Rockaway Bor. Bd. of Ed., P.E.R.C. No. 2016-59, 42 NJPER 447 (¶121 2016); Tinton Falls Bd. of Ed., P.E.R.C. No. 2002-68, 28 NJPER 241 (¶33090 2002); Bloomfield Bd. of Ed., P.E.R.C. No. 99-53, 25 NJPER 38 (¶30015 1998).

Although State monitors have the authority to “oversee all district staffing, including the ability to hire, promote, and terminate employees” (N.J.S.A. 18A:7A-55(b)(4)), that authority is “subject to the education, labor, and employment laws and regulations, including the ‘New Jersey Employer-Employee Relations Act,’ . . . and collective bargaining agreements entered into by the school district” (N.J.S.A. 18A:7A-55(b)(5)). The Board has not cited any legal authority to suggest that the Accountability Act preempts the grievants’ right to demand arbitration over their mid-year terminations. Moreover, any conflict of interest perceived by the Board or the Board’s attorney does not preclude a State monitor from seeking to intervene in a scope petition or related grievance arbitration with^{3/} or without the assistance of counsel. See, e.g., *Passaic Cty. Superintendent of Elections*, P.E.R.C. No. 2017-29, 43 NJPER 446 (¶125 2017); see also, N.J.A.C. 19:13-3.3.

Turning to the Board’s reliance on Rankins v. Board of Educ. of the City of Pleasantville, nothing in that case suggests that

^{3/} We note that in an analogous situation where the State monitor overturned the Board’s decision, it appears that the State monitor and the Board were jointly represented by the same counsel. See, Pleasantville Bd. of Educ. v. Pleasantville Educ. Ass’n, 2009 N.J. Super. Unpub. LEXIS 2311 (App. Div. 2009). In other matters, it appears that the State monitor has been represented by outside counsel. See, e.g., Board of Educ. of the City of Pleasantville v. Riehman, 2013 N.J. Super. Unpub. LEXIS 312 (App. Div. 2013); Rankins v. Board of Educ. of the City of Pleasantville, 2012 N.J. Super. Unpub. LEXIS 2369 (App. Div. 2012).

the Accountability Act preempts the Association's right to demand arbitration over the grievants' mid-year terminations. In Rankins, the superintendent determined to non-renew Rankins – a non-tenured security guard – for the following school year. After a Donaldson hearing was held, the Board voted to reinstate Rankins. See, N.J.S.A. 18A:27-4.1(b); Donaldson v. Bd. of Educ. of North Wildwood, 65 N.J. 236, 240-241 (1974). Subsequently, the State monitor overturned the Board's decision to reinstate Rankins. See, N.J.S.A. 18A:7A-55(b) (4), - (b) (5). Rankins then filed a petition of appeal with the Commissioner of Education. Although the Commissioner “[has] jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws” such as the non-renewal of a non-tenured security guard in Rankins pursuant to N.J.S.A. 18A:6-9, the Commission has held that “the general power vested in the Commissioner of Education . . . is not an alternate statutory appeal procedure for employees whose only protection against particular forms of allegedly unjust discipline is contractual, not statutory” (Essex Cty. Coll., P.E.R.C. 88-63, 14 NJPER 123 (¶19046 1988)). See also, Shamong Tp. Bd. of Ed., P.E.R.C. No. 2005-14, 30 NJPER 400 (¶129 2004); Bloomfield Bd. of Ed., P.E.R.C. No. 99-53, 25 NJPER 38 (¶30015 1998).

Accordingly, we decline to restrain arbitration in this case.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: August 17, 2017

Trenton, New Jersey