

P.E.R.C. NO. 91-75

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SEA GIRT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-29

SEA GIRT EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Sea Girt Education Association against the Sea Girt Board of Education. The grievance contests a kindergarten teacher's transfer to a supplementary teacher position. The Commission finds that the transfer was not disciplinary and thus not arbitrable.

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Appearances:

For the Petitioner, Kenney, Gross & McDonough, attorneys  
(Frank M. McDonough, of counsel; Mark S. Tabenkin, on the  
brief)

For the Respondent, Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 31, 1990, the Sea Girt Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Sea Girt Education Association. The grievance contests a kindergarten teacher's transfer to a supplementary teacher position.

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

The Association represents the Board's professional personnel under contract, excluding administrators. The parties' collective negotiations agreement runs from July 1, 1989 to June 30, 1992. Its grievance procedure ends in binding arbitration.

The Sea Girt School District has one building. It enrolls students from kindergarten through grade eight. Enrollment has declined for several years. The percentage decline has been greater in grades one through eight than in kindergarten.

Jane Richards has been employed by the Board for 24 years. Before the 1989-90 school year, she was the kindergarten teacher and worked half-time. She has received excellent classroom observations and evaluations as well as positive letters from parents of her students.

On April 30, 1990, several Sea Girt residents sent the Board's president a letter. They expressed their concern about declining enrollment, specifically in the kindergarten class, and asked to meet with the Board. The Board directed its curriculum committee to meet with them.

On May 14, 1990, that meeting was held. Parents criticized Richards' teaching methods and attitude as well as the kindergarten program. Written complaints were also submitted. While curriculum committee members defended Richards and refused to discuss her teaching performance, it became apparent that if Richards taught that class again, six children would not be enrolled and enrollment would drop to eight.

The curriculum committee scheduled an investigatory interview with Richards for May 18, 1990. The Superintendent sent Richards a letter stating that the interview was "for the purpose of information gathering as it relates to several complaints lodged

with the...curriculum committee...." It stated that Richards had a right to union representation at the interview because the information obtained might be used in the committee's report and could have an adverse effect upon her employment. This letter was faxed to an NJEA UniServ representative who asked that the interview be postponed and the complaints be specified.

On May 17, 1990, the Board's attorney supplied this information. On May 22, the UniServ representative responded.<sup>1/</sup>

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<sup>1/</sup> A summary of the allegations and responses is listed below:

1. The teacher's use of "unhappy face" on papers with mistakes -- practice discontinued four years ago at superintendent's direction.
2. The teacher's method of grouping and labelling children as well as demanding perfection -- this entails a pedagogical skill and is not subject to parental participation.
3. The teacher's method of humiliating students in front of peers and lack of affection for students -- denied.
4. Statement that a student "would be on drugs in 2 or 3 years" -- denied.
5. Teacher taking "octopus" paper without a name -- so frivolous it does not deserve further comment.
6. Parents not permitting their children to attend kindergarten due to teacher's method and returning students to District for first grade -- unable to respond since it is a managerial prerogative.
7. Teacher's method of writing on children's hands -- practice discontinued two years ago.

Footnote Continued on Next Page

The representative also sent a letter to the superintendent complaining that the superintendent had directed Richards to attend a meeting without informing the representative or having him present.

On May 24, 1990 the curriculum committee met with Richards. She offered to respond to the allegations if any threat of discipline was rescinded. The committee did not accede so she relied on her representative's letter. The committee later received letters from parents and former students supporting Richards.

In June 1990, the committee issued its report. The report contained these findings:

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1/ Footnote Continued From Previous Page

8. Teacher is impatient and gives poor direction and negative reinforcement to children -- denied.

9. Teacher yelled at students and held student's arm tightly while asking him to sit still at Maypole dance -- teacher was enforcing discipline to keep Maypole from toppling.

10. Poor image of kindergarten expressed by nursery school teachers -- response not appropriate.

11. Child was left in locked classroom, with lights off, after teacher went home -- occurred eight years ago.

12. The potential for declining kindergarten enrollment -- response not appropriate.

The representative also noted that Richards' evaluations were excellent and nothing in her personnel file criticized any of the 12 items.

1. The more severe allegations against Mrs. Richards by the public were not recent events and, in fact, these actions had been administratively addressed in the past. For example, the writing on students' hands and utilization of "unhappy faces" on students' paper [sic] were discussed with Mrs. Richards several years ago and were discontinued. The occasion wherein a student was left in a locked room, occurred several years ago and was handled administratively as well. Therefore the Curriculum Committee feels there is no need for further investigation or action on these complaints.

2. The remaining complaints by the parents are merely reflective of the method of teaching employed by Mrs. Richards. Although some of those methods may not be popular, nor acceptable by the public or even members of the Committee, they do not reach the level for a recommendation of any type of disciplinary action against Mrs. Richards.

3. Even though no disciplinary action is recommended against Mrs. Richards as a result of the public's concerns, there remains a public perception problem which must be addressed, regardless of whether the public perception is real or imagined. Therefore, it is the recommendation of the Curriculum Committee that a new Committee be formulated in an attempt to alleviate the poor public image that has developed between the community and the kindergarten class. An example of this problem is reflected in comments by parents as to the opinion of nursery school teachers toward the Sea Girt kindergarten classes. This newly formulated Committee can further investigate the reasons for the dramatic decline in enrollment for this class over the years, as well as ways to improve enrollment in the future.

4. Since it is recommended that no disciplinary action be taken against Mrs. Richards in this matter, it is further recommended that none of the letters submitted by parents concerning this process be placed in her personnel file.

5. It will take some time for the new Committee to fully review this situation. Given this fact, coupled with the public's attitude regarding the current kindergarten teacher, it is recommended that the Board transfer Mrs. Richards to a lateral position in the District so as to increase the current enrollment in Kindergarten for the 1990-91 school year. The public has made it clear that the enrollment for the class will drop from a potential 14 students to a low of 6 students, if the same instructor is in place for this year. Given the fact that parents will be making alternative arrangements for their children over the next few weeks, it is imperative that a decision be made as to who will teach the kindergarten class in 1990-91. At this time of declining enrollment and fiscal restraint, the Sea Girt Board of Education can ill afford to have a drastic cut in enrollment for kindergarten if all that is necessary to alleviate the problem would be a lateral transfer of a teacher.

On July 16, 1990, the Board, upon the Superintendent's recommendation, unanimously passed this resolution:

WHEREAS, the Sea Girt Board of Education has been faced with a decline in enrollment of students in the kindergarten program over the last few years, and

WHEREAS, the Sea Girt Board of Education had received numerous parental concerns surrounding the kindergarten class in the District; and

WHEREAS, the Board has been advised by numerous parents that they were considering not enrolling their children in the kindergarten program this Fall, if no changes in the program are made; and

WHEREAS, the Board has attempted to take steps to address the concerns to the public, through the formulation of a committee to further investigate the public perception of the kindergarten classes in Sea Girt; and

WHEREAS, it will take some time for the committee to formulate recommendations to improve the public perception of the kindergarten classes; and

WHEREAS, parents are currently making alternative arrangements for their children's 1990/91 kindergarten classes; and

WHEREAS, the District has assigned the same teacher to the kindergarten class for the last 24 years; and

NOW, THEREFORE BE IT RESOLVED that the Sea Girt Board of Education:

1. Establishes the position of full half-time supplementary teacher.
2. Transfers the assignment of Jane Richards from kindergarten, as a full half-time position, to a lateral full half-time position of supplementary teacher.
3. This transfer should not in any way be considered disciplinary against Ms. Richards. This transfer is made in an attempt to maintain the kindergarten enrollment in the Sea Girt School District.
4. It is the determination of this Board that the continual decline in the number of students in the kindergarten class must be addressed, because it is an important educational issue for not only the kindergarten class, but the entire School District.<sup>2/</sup>

According to a newspaper article, the Board's president stated at an August meeting that the Board was "privy to information

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<sup>2/</sup> This resolution had been adopted at the Board's June meeting without a roll-call vote. To correct that error, the resolution was readopted in July. Richards asserted that information submitted during the interim showed that enrollment would continue to decline even if she was transferred. According to the Superintendent, eight children were enrolled, but the parents of two children said they would be withdrawn if Richards was their teacher. Eleven students ended up enrolling in the September 1990 kindergarten class.



that has not been made public" about Richards' transfer.<sup>3/</sup>

Richards' salary, benefits, work hours, and work site remain unchanged. The Board has not reprimanded her, withheld her increment, or filed tenure charges.

The Association grieved the transfer, alleging it was an unjust disciplinary act.<sup>4/</sup> It sought Richards' reinstatement to her kindergarten position. The grievance was denied; binding arbitration was demanded; and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 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. [Id. at 154]

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<sup>3/</sup> Richards also asserts that early in April 1990, the Superintendent told her he would never recommend her for a full-time position and was upset when she declined early retirement. The Superintendent asserted that he told Richards that it was unlikely the Board would approve her for a full-time position if the first grade teacher retired. He denied offering her early retirement, noting he had no authority to do so.

<sup>4/</sup> The grievance also alleged that the Board violated contractual procedures concerning the handling of complaints and criticisms. These procedures are set forth in Articles IV, X, and XI. The Board has not sought to restrain arbitration of these contentions. We will therefore consider only the legal arbitrability of the decision to transfer Richards.

We therefore do not consider the merits of the grievance or the wisdom of the personnel action.

Transfers and reassignments are not mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. But under the discipline amendment to N.J.S.A. 34:13A-5.3, an employer may agree to submit a disciplinary transfer to binding arbitration absent an alternate statutory appeal procedure. We have found that a transfer was disciplinary in one case. Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986). We have found that transfers were not disciplinary in other cases. City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990); City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199 1986); Bernardsville Bd. of Ed., P.E.R.C. No. 86-47, 11 NJPER 688 (¶16237 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Cape May Cty. Bridge Comm'n, P.E.R.C. No. 84-133, 10 NJPER 344 (¶15158 1984), aff'd App. Div. Dkt. No. 5186-83T6 (7/9/85).<sup>5/</sup>

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5/ N.J.S.A. 34:13A-25 provides: "Transfers of [school board] employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons." The parties agree that this statute does not apply to this intraschool reassignment. This statute does not restrict an employee's preexisting and additional right under N.J.S.A. 34:13A-5.3 to submit disciplinary disputes to agreed-upon grievance procedures which do not displace statutory appeal procedures. N.J.S.A. 34:13A-28.

We now consider whether Richards' transfer was disciplinary. The Board and its curriculum committee responded to a perceived need to maintain the kindergarten enrollment. The curriculum committee recommended that no disciplinary action be taken and that none of the complaints be placed in Richards' personnel file. The Board accepted these recommendations. Richards' salary, benefits, work hours and work site were not changed. Under all these circumstances, we hold that the transfer was not disciplinary and restrain binding arbitration to the extent the grievance contests the transfer decision.

ORDER

The request of the Sea Girt Board of Education for a restraint of binding arbitration is granted to the extent that the grievance contests the decision to transfer Richards.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Johnson and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: Trenton, New Jersey  
February 27, 1991  
ISSUED: February 28, 1991