

I.R. NO. 88-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EATONTOWN BOARD OF EDUCATION,

Public Employer-Petitioner,

-and-

Docket No. SN-88-51

EATONTOWN SUPPORTIVE STAFF ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to grant an interim restraint of arbitration contesting the discharge of a bus driver. The Board of Education claims that its insurance carrier informed the Board that if the grievant was not removed as a bus driver, the insurance carrier would no longer carry insurance coverage for the Board. The Association claims that the discharge was for discipline and therefore arbitrable under the just cause provision of the agreement. The grievant's poor driving record is both the cause of the insurance company's decision and reason for a disciplinary discharge. The motivation for the discharge was at issue. The Board did not show at the interim relief proceeding that it had a substantial likelihood of success in demonstrating that the discharge was not for discipline.

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Appearances:

For the Public Employer-Petitioner  
Gagliano, Tucci, Iadanza & Reisner, Esqs.  
(Ann F. Halton, of counsel)

For the Respondent  
Marc Abramson, Uni-Serv Rep.

INTERLOCUTORY DECISION

On January 21, 1988, the Eatontown Board of Education ("Board") filed a Petition for Scope of Negotiations Determination ("Petition") seeking a determination as to whether certain matters in dispute between the Board and the Eatontown Support Staff Association ("Association") were within the scope of negotiations under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act") pursuant to N.J.A.C. 19:13-3.10.

The Petition was accompanied by an Order to Show Cause wherein the Board requested that the Association show cause why an order should not be issued restraining arbitration until a final determination by the Public Employment Relations Commission

("Commission"). The Order to Show Cause was executed and made returnable for March 1, 1988. On that date, I conducted an Order to Show Cause hearing having been designated to hear requests for interim relief on behalf of the full Commission. Both parties were given the opportunity to submit briefs and argue orally at the hearing.

The Association is the statutory majority representative of certain employees including bus drivers of the Board of Education. On December 10, 1987, a bus driver, Audrey Caprario, received a letter from the Board's superintendent advising her that she had been suspended. At the Board's December 21, 1987 meeting, the Board dismissed Caprario. The Association filed a grievance pursuant to the grievance procedure in the collective negotiations agreement between it and the Board and ultimately filed a demand for arbitration.

In response, the Board filed this petition. It claims that the announced dismissal of Caprario came in response to a notification by its insurance carrier that if Caprario were not removed as a bus driver, the insurance carrier would no longer provide insurance coverage for the Board. Accordingly, the removal of Caprario was an exercise of its managerial prerogative and was not a term and condition of employment.

The Association claims that this matter is arbitrable under Article 4 of the Agreement, Employee Rights, which provides that no employee shall be disciplined without just cause.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>1/</sup>

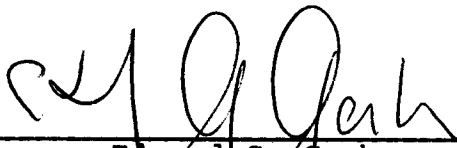
Discipline of non-teaching staff members with no source of statutory protection and no statutory appeal procedure may be contested through arbitration. Willingboro Bd. of Ed. v. Employees Ass'n of Willingboro Schools, App. Div. Docket No. A-5313-82T3 (April 24, 1984) aff'g P.E.R.C. No. 83-147, 9 NJPER 356 (¶14158), pet. for certif. denied (10/23/84); Toms River Bd. of Ed. v. Toms River School Bus Drivers Ass'n., App. Div. Docket No. A-5489-82T2 (April 24, 1984), aff'g P.E.R.C. No. 83-148, 9 NJPER 360 (¶14159 1983); CWA v. PERC and City of E. Orange, P.E.R.C. No. 83-109, 9 NJPER 147 (¶14070 1983), rev'd and rem'd, sub nom Communications Workers v. Pub. Emp. Rel. Com'n, 193 N.J. Super. 658 (App. Div. 1984)

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<sup>1/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

I do not believe that the Board met its burden here. Caprario's poor driving record is both an integral component of the insurance company's decision and a grounds for discharge. Absent other facts, the motivation for the discharge is at issue.<sup>2/</sup> The Board has not shown that it has a substantial likelihood of success in demonstrating that the discharge was not discipline. This is an interim order and this matter is subject to a final determination by the Commission.

The application is denied.

  
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Edmund G. Gerber  
Commission Designee

DATED: March 3, 1988  
Trenton, New Jersey

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<sup>2/</sup> No facts were introduced which indicate that the Board sought an alternative insurance coverage for Caprario nor did it seek to provide alternate employment for Caprario.