

I.R. NO. 91-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLINTON TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-66

CLINTON TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain arbitration on a grievance brought by Clinton Township Education Association against the Clinton Township Board of Education. The Board alleged that the demand for arbitration was pre-empted by a provision of the New Jersey Tort Claims Act. The Commission Designee held that the grievance is one which concerns violations of a collective negotiations agreement and the issue involved is not a traditional tort claim.

I.R. NO. 91-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLINTON TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-66

CLINTON TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner  
Rand, Algeier, Tosti & Woodruff, attorneys  
(Ellen S. Bass, of counsel)

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

INTERLOCUTORY DECISION

On February 28, 1991, the Clinton Township Board of Education filed a Scope of Negotiations petition seeking to restrain the arbitration of a grievance filed by the Clinton Township Education Association. The Petition was accompanied by a request for an interim restraint of the arbitration pending a full Commission determination. An Order to Show Cause was executed and made returnable for April 11, 1990.

On November 1, 1990, the Association demanded arbitration on a grievance which provided:

Nature of dispute: Willful destruction and seizure of personal and union materials and records in violation of the law and contract.

Remedy Sought: Restoration of materials or compensation for reconstruction of same.

The Board argues that this demand for arbitration alleges tortious conduct by Board representatives and seeks traditional tort remedies. As such, this demand for arbitration is pre-empted by provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Board relies on an unpublished opinion, Old Bridge Township Board of Education v. Old Bridge Township Education Association, (App. Div. A-4556-8067, 3/11/88).

In Old Bridge, the Appellate Division held that a demand for arbitration for damages arising out of a physical altercation between the grievant and a supervisor were based upon the alleged tortious conduct of the supervisory employee and therefore was pre-empted from negotiations by the New Jersey Tort Claims Act, N.J.S.A. 59:1.1 et seq. The Tort Claims Act statutorily limits tort liability of public entities and grants them immunity from liability for the willful conduct of an employee.

Here, it is not disputed that the Association has maintained a file cabinet at the Round Valley School of all of the Association's records relating to grievances, negotiations and contract administration.

Article V of the parties' contract provides that "Association business may be conducted on school premises..." The Association's grievance claims that Article V was violated when on September 11, 1990, the Association's grievance chairperson returned from summer recess to discover that the new superintendent of

schools had ordered the cabinet emptied and all materials contained therein removed.

This matter is distinguishable from Old Bridge. If one were to broadly interpret Old Bridge, it would mean that violations of N.J.S.A. 13A-5.4(a)(1) and (3)<sup>1/</sup> would be pre-empted by the Tort Claims Act. Certainly, the Court did not intend such a broad application of Old Bridge. In Old Bridge, the grievants were seeking, through arbitration, monetary damages flowing from a fight with a supervisor. The harm alleged is one which traditionally is a tort action. The fight itself has nothing to do with either the collective negotiations contract or traditional labor relations and might fall within the Tort Claims Act's grant of immunity for willful acts of an employee.

Here, the grievant is claiming that an express term of the contract has been violated; the papers that are missing are the type of papers needed in the labor relations process. The disposition of old grievances are needed to analyze and process new ones. Past contracts may be referred to in negotiations, etc.

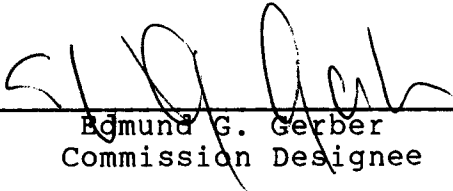
Similarly, the damages sought are not necessarily monetary by nature. Rather, the Association calls for either the return of

---

<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

its old records or their replacement by the reproduction of the Board's papers.

The Board has not shown it has a substantial likelihood of success in restraining the arbitration before the Commission and its application for an interim restraint is denied.

  
\_\_\_\_\_  
Edmund G. Gerber  
Commission Designee

DATED: April 18, 1991  
Trenton, New Jersey