

I.R. NO. 96-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-124

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

On May 24, 1996, a Commission Designee temporarily restrained an arbitration brought by the Middletown Township Education Association. The arbitration sought to contest the appointment of an Interim Superintendent of Schools, contending the appointment violated the Board's conflict of interest policy. Since the matter sought to be arbitrated concerns the appointment of a managerial employee as well as questions of supervision and evaluation, there is a substantial likelihood that the Commission will find the matter is not arbitrable.

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Appearances:

For the Petitioner,  
Kenney & Gross, attorneys  
(Mark S. Tabenkin, of counsel)

For the Respondent  
Zazzali, Zazzali, Fagella & Nowak, attorneys  
(Kenneth I. Nowak, of counsel)

INTERLOCUTORY DECISION

On May 2, 1996, the Middletown Township Board of Education filed a scope of negotiations petition with the Public Employment Relations Commission seeking to restrain arbitration on a grievance filed by the Middlesex Township Education Association. The petition was accompanied by an order to show cause seeking an interim restraint of arbitration pending a final Commission decision. The order to show cause was executed and a hearing was conducted on May 20, 1996.

The Board has a conflict of interest policy which, in part, is intended to prevent an administrator from having authority over a close relative.

The Board appointed Dennis Jackson to the position of Interim Superintendent of Schools. Jackson is the father of Noreen Cohen, a teacher within the District. When Jackson was appointed as interim Superintendent, a procedure was created transferring all administrative and supervisory responsibilities of Cohen to the school personnel administrator, who in turn reports directly to the Board of Education on all matters concerning Cohen.

The Association's grievance alleges that the Board's appointing of Jackson as Interim Superintendent constitutes a violation of the Board's conflict of interest policy.

The Association argues that Jackson continues to have authority over the personnel administrator, so the conflict of interest remains. Moreover, it asserts that its grievance does not intend to challenge Jackson's appointment as Superintendent. Rather, the Association argues that the Board in the past has not created special administrative structures for other employees in the unit who experienced a similar conflict. The Association points to a teacher who served for many years in one school, but when her husband was appointed principal of the school, the Board transferred the teacher and would not create the type of structure they did for Cohen. The Association maintains that an arbitrator would have a number of remedies available apart from removing Jackson as Acting Superintendent.

In support of its position, the Association cites Somerset County, P.E.R.C. No. 84-92, 10 NJPER 130 (¶15066 1984). In

Somerset, the Commission held that a code of ethics policy is negotiable to the degree that it concerns terms and conditions of employment.

The Board maintains that its' appointment of Jackson is a managerial prerogative and not arbitrable.

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. 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).

A code of ethics is negotiable only to the extent it directly concerns matters which are terms and conditions of employment. Somerset. State of N. J. (OER) and CWA, P.E.R.C. No. 93-55, 19 NJPER 60 (¶24028 1992), aff'd in pt. rev'd in pt. 267 N.J. Super. 582 (App. Div. 1994), certif. den. 135 N.J. 468 (1994) [NJPER Supp.2d 311 (¶240 App. Div. 1993), App. Div. Dkt. No. A-2597-92T5 (10/15/93)].

Here, the matter sought to be arbitrated concerns the appointment of a managerial employee as well as questions of supervision and evaluation, all matters which are managerial prerogatives and are not arbitrable. The Association raises questions concerning disparate treatment of teachers in the district. Nevertheless, the issue as raised does not appear to be within the sphere of arbitrability. State v. State Supervisory Employees Association, 78 N.J. 54, 67 (1978).

I believe that the Board has met its heavy burden. It has raised a substantial issue as to the arbitrability of the Association's grievance. The application for an interim restraint of arbitration is granted pending a final Commission decision.

  
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Edmund G. Gerber  
Commission Designee

DATED: May 24, 1996  
Trenton, New Jersey