

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-26

CITY ASSOCIATION OF SUPERVISORS
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

A Commission designee restrains arbitration pending a scope of negotiations determination by the Public Employment Relations Commission. He found that the Association sought arbitration over a disciplinary procedure which arose prior to July 30, 1982. Under the law at the time the grievance was filed, no aspect of disciplinary determinations could be reviewed through binding arbitration. An amendment to N.J.S.A. 34:13A-5.3 which now allows negotiation over and binding arbitration of certain disciplinary determinations does not apply retroactively to cases filed before its July 30, 1982 effective date.

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Appearances:

For the Petitioner
Louis C. Rosen, Acting General Counsel
Newark Board of Education

For the Respondent
Barry Aisenstock, Esq.

INTERLOCUTORY DECISION

On September 28, 1982, the Newark Board of Education filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (Commission). The petition requested that the Commission restrain binding arbitration of a grievance which the City Association of Supervisors and Administrators (Association or Respondent) had filed and the Newark Board of Education (Board) had denied. The grievance alleged that Mr. Gonzalez, a member of the collective negotiations unit, was discharged from the position of Director of Bilingual Education and subsequently given a letter of termination. The grievance went on to challenge this action. The grievance demanded that Mr. Gonzalez be reinstated or offered due process in accordance with the State's

statutes, contractual requirements and Board policy.

The Petition for Scope of Negotiations Determination was accompanied by an Order to Show Cause with temporary restraints.

The arbitration date had been set for Thursday, September 30th. Arguments were heard on the restraints on the afternoon of September 28th. After oral arguments the undersigned did sign temporary restraints ordering that the Respondent be restrained and enjoined from taking any action to arbitrate the said grievance.

In Egg Harbor Twp. School District, P.E.R.C. No. 83-39, 8 NJPER ____ (¶ 1982), the Commission recognized that the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq, as amended, effective July 30, 1982. Subsection 5.3 now authorizes public employers and public employee organizations to negotiate disciplinary review procedures provided the affected employees do not have statutory protection under tenure or Civil Service laws and agreed to adopt binding arbitration as part of these procedures. The Commission stated:

Nothing, however, in amended subsection 5.3 indicates that it is to apply retroactively. Instead, the amendment enabling negotiations of disciplinary review procedures and binding arbitration under such procedures was expressly made effective on the date of July 30, 1982.

The Commission went on to find that in all cases which arose prior to July 30, 1982, it would apply the standards enunciated in State of New Jersey v. Local 195, IFPTE, 179 N.J. Super. 146 (App. Div. 1981), certif. den. 89 N.J. 433 (1982) and City of Jersey City v. Jersey City P.B.A., 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J. 433 (1982). Those cases clearly established

that no aspect of a public employer's disciplinary determinations could be subject to either negotiations or binding arbitration.

In the instant matter the grievance was filed with the employer on January 14, 1982. It is reasonable to assume that the Commission may permanently restrain arbitration in this matter. Bd/Ed of Englewood v. Englewood Teachers, 135 N.J. Super. 120. Accordingly, the arbitration is temporarily restrained during the pendency of the Commission's full scope of negotiations proceeding.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

Dated: September 30, 1982
Trenton, New Jersey