

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF EDISON, MIDDLESEX COUNTY,

Petitioner,

-and-

Docket No. SN-84-11

EDISON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Commission's designee temporarily restrains arbitration where there is an unresolved dispute as to whether a "riffed" teacher lost her status as an employee. The teacher declined an offer of re-employment. The instant dispute arose out of a subsequent recall. If she no longer was an employee the decision to hire was a managerial prerogative not subject to arbitration.

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INTERLOCUTORY DECISION

This matter having been opened to the Public Employment Relations Commission by R. Joseph Ferenczi, Esq., attorney for the Petitioner Board of Education of the Township of Edison, and the Commission's named designee Edmund G. Gerber having read the scope of negotiations petition accompanying the Notice of Motion for Restraint of Arbitration and brief in support thereof, and further having heard oral argument on September 19, 1983 by Mr. Ferenczi in support of the motion and by Stephen Klausner, Esq., attorney for the Edison Township Education Association, the undersigned hereby temporarily restrains arbitration in the matter of Martha Heller, grievant, before the American Arbitration Association, No. 18 39 0243 83D, which is currently scheduled before Joseph Wildebush on September 30, 1983.

The arbitration in question concerns a denial of a leave of absence of Heller. Heller was the subject of a RIF during the prior year and was enrolled in a college program when she was

offered re-employment by the Edison Township Board of Education (Board). Heller declined the offer of employment and asked for a leave of absence. Heller was given an ultimatum, either her employment status be terminated or she return to work and Heller declined to take the position and therefore was considered terminated by the Board.

Several months prior to the offer of employment Heller was offered a part-time position and declined that offer of employment as well.

The Board argues that because of Heller's refusal to accept employment, particularly for the part-time position, she was no longer an employee of the Board and pursuant to Teaneck Bd/Ed v. Teaneck Teachers Assn., 94 N.J. 9 (1983), the hiring of employees is a managerial prerogative not subject to arbitration.

The Association argues that Heller never lost her status as an employee and in support it cites Lichtman v. Ridgewood Bd/Ed, 93 N.J. 362 (1983).

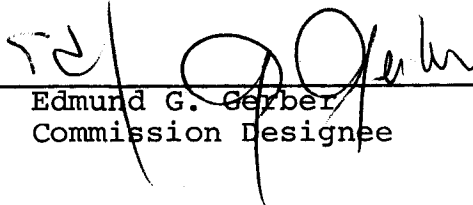
It is also noted that aspects of Heller's status is currently the subject of litigation before Administrative Law Judge M. Kathleen Duncan who has stated in an Order Granting Partial Summary Decision, the status of "whether [Heller] abandoned [her] tenure rights by refusing 'properly offered' employment within the [Board's] district subsequent to the RIF...remain[s] for determination" in that proceeding.

The issue of Heller's employment status is so unsettled that to avoid the possibility that future litigation would negate the outcome of an arbitration the prosecution of the arbitration

proceedings in the instant matter might prove to be a futile act. See Bd/Ed of Englewood v. Englewood Teachers Assn., 135 N.J. Super. 120 (App. Div. 1975).

The restraints hereby imposed are temporary in nature and in effect only until the full Commission has an opportunity to make a determination on the Board's scope of negotiations petition.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Edmund G. Gerber
Commission Designee

Dated: September 20, 1983
Trenton, New Jersey