

P.E.R.C. NO. 94-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-91

IRVINGTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Irvington Education Association against the Irvington Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it terminated an employee without written notice. The Commission concludes that because of N.J.S.A. 18A:27-1, an arbitrator cannot conclude that the grievant became an employee by virtue of attending an orientation session in August. The Board did not vote to appoint the employee nor enter into any written employment contract specifying that he had been appointed as required by that statute.

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Appearances:

For the Petitioner, Schwartz, Simon & Edelstein, attorneys
(Nicholas Celso, III, of counsel; Joel G. Scharff, on the
brief)

For the Respondent, Kenneth I. Wiggins, UniServ Field Rep.

DECISION AND ORDER

On April 5, 1993, the Irvington Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Irvington Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it terminated an employee without written notice.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's certified teaching personnel and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1991

through June 30, 1993. Article V, entitled Teacher Assignments, requires that teachers be notified before the end of the school year of their classes, schedules, and schools for the next school year. The grievance procedure ends in binding arbitration.

On March 26, 1992, Robert Wilson entered into an employment contract with the Board. The contract stated that Wilson was appointed to the position of "counsel" and would hold that position from April 13 to June 30, 1992. The contract provided for 60 days' notice before Wilson could be terminated. The contract also noted that Wilson's position was "DFSCA-funded" and that he would be placed at step 4 of the salary guide for the 1991-1992 school year. The contract also recorded an understanding that Wilson would be placed on step 4 of the salary guide for the 1992-1993 school year as well.

On April 15, 1992, the Board met and approved Wilson's appointment as a student assistance counselor for the period of April 13 through June 30, 1992. The minutes noted that Wilson's position was funded for the balance of the 1991-1992 school year from "DFSCA funds." Wilson served in this position during the rest of the 1991-1992 school year. He was not included among certificated staff reappointed for the 1992-1993 school year.

In August 1992, the superintendent sent Wilson a form letter. The letter notified all new staff that an orientation session would be held on August 28, 1992. Wilson also received health, dental and prescription identification cards. Wilson called

the assistant superintendent's office to verify that he should attend the meeting. He was told that he would not have received a letter if he was not a new staff member. However, when Wilson went to the orientation meeting, he was told that his position had not been continued.

On October 21, 1992, the Board appointed Wilson to the position of student assistance counselor for the rest of the 1992-1993 school year. He was again placed on step 4 of the salary guide. The minutes noted that Wilson had been "return[ed] to former position" and that his position had been proposed for "EIP funding." Wilson returned to work on October 23.

On December 4, 1992, the Association filed a grievance on Wilson's behalf. The grievance asserted that the Board had violated Article V and related education laws by not giving Wilson proper written notice of his "termination." The grievance sought retroactive compensation from September 1 to October 22, 1992.

On December 14, 1992, the superintendent denied the grievance. He noted that N.J.S.A. 18A:27-10 applied only to teaching personnel "continuously employed since the preceding September" and thus did not require written notice of non-renewal in Wilson's case; Wilson had received a limited appointment based on grant funding, and the Board had no contractual obligation to notify Wilson that his limited appointment had not been renewed. The Board also denied the grievance.

On February 11, 1993, the Association demanded binding arbitration. It identified the nature of the dispute as Wilson's allegedly improper termination. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider contractual merits of this grievance or any contractual defenses the Board may have.

This negotiability dispute is narrow. The Association has not contended that the Board was obligated to renew Wilson's contract or to notify him by the end of the 1991-1992 school year that his contract had not been renewed. It argues instead that by virtue of accepting an invitation to attend an orientation meeting, Wilson became a district employee for the 1992-1993 school year and could not be terminated without 60 days' notice. The Board responds that N.J.S.A. 18A:27-1 preempts a contention that Wilson became an employee simply by attending an orientation meeting.

N.J.S.A. 18A:27-1 provides:

No teaching staff member shall be appointed, except by recorded roll call majority vote of the

full membership of the board of education appointing him.

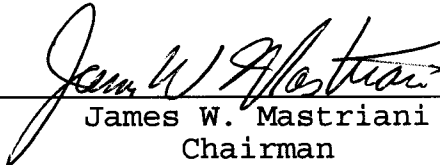
It is undisputed that the Board did not vote to appoint Wilson to a position for the 1992-1993 school year until October 21, 1992. Nor at any time before then did the Board enter into any written employment contract with Wilson specifying that he had been appointed for the 1992-1993 school year and requiring that he be given 60 days' notice before termination. We agree with the Board that because of N.J.S.A. 18A:27-1, an arbitrator cannot conclude that Wilson became an employee by virtue of attending the orientation session in August. We will therefore restrain arbitration.

The Association's brief (p. 3) acknowledges that "maybe this dispute, because of its nature, should follow another avenue of redress" and it declares that its contentions "should not be time-barred if forwarded to another arena for redress." Our jurisdiction is limited to determining the negotiability of this dispute. We express no opinion on what other avenues of redress might or might not be available and what statute of limitations should or should not apply.

ORDER

The request of the Irvington Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 25, 1993
Trenton, New Jersey
ISSUED: October 26, 1993