

P.E.R.C. NO. 2002-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TINTON FALLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-29

TINTON FALLS EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Tinton Falls Board of Education for a restraint of binding arbitration of a grievance filed by the Tinton Falls Education Association. The grievance asserts that the alleged mid-year termination of an instructional aide lacked just cause and violated contractual notice provisions. The Commission concludes that the employer has made no negotiability argument distinguishing a long line of cases declining to restrain binding arbitration of mid-year contract terminations of non-professional school employees.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Reussille, Mausner, Carotenuto,
Barger & Steel, L.L.C., attorneys (Martin M. Barger, on
the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On January 31, 2002, the Tinton Falls Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Tinton Falls Education Association. The grievance asserts that the alleged mid-year termination of an instructional aide lacked just cause and violated contractual notice provisions.

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

The Association represents certified personnel, secretaries, library clerks and instructional aides. The parties' collective negotiations agreement is effective from July 1, 1999

through June 30, 2002. The grievance procedure ends in binding arbitration.

Deborah Horan has been a one-on-one aide for the Board. A March 2000 Classroom Observation states that she was performing her duties at the Swimming River School in a very valuable and commendable manner. On June 25, 2001, Horan signed a one-year employment contract as an instructional aide for the 2001-2002 school year. The contract provides that it may be terminated by either party upon 60 days notice in writing.

At the start of the 2001-2002 school year, Horan was apparently assigned to another school (MFA). The Board states that Horan asked to be removed from that assignment and that it was agreed that she would be reassigned to a position at the Swimming River School if such an assignment became available. On October 1, 2001, the director of special services sent Horan a 60-day notice of termination based on her notification that she could not continue in her assignment, and staff confirmation that she was misplaced and should not be continued in her current assignment.

On October 15, 2001, the Association filed a grievance. It states, in part:

The TFBOE violated Article 18.B of the collective bargaining agreement.

Mrs. Horan's due process rights were violated.

The BOE failed to provide Mrs. Horan an opportunity to respond to the reasons and state her case.

Mrs. Horan was not given a Rice notice or the opportunity for a Donaldson hearing.

The resolution sought is that the motion of October 1, 2001 be rescinded and Mrs. Horan returns to full-time status of employment; due process rights are protected.

On October 19, 2001, the acting superintendent denied the grievance. He determined that all contractual rights had been honored.

On October 22, 2001, the director of special services sent an e-mail to the Association president, with a copy to the acting superintendent. The e-mail indicated that the director would like to have Horan go to the Swimming River School to provide aide services there rather than continue as an aide at her current school (MFA). The director reported that Horan wanted out of that assignment and that he felt that it was in everyone's interest to reassign her. The Association president responded within one hour that she would support that move.

On November 20, 2001, Horan wrote to the director of special services to notify him that she continues to be interested in any instructional assistant position that may be available.

On November 26, 2001, the Board denied the grievance.

On December 6, 2001, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n 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 the merits of this grievance or any contractual defenses the Board may have.

The Board argues that this case involves the availability of a position for Horan, not a contractual violation. It points out that no one has indicated that Horan was terminated due to job performance and that Horan acknowledged that fact and asked for a new assignment if one became available.

The Association argues that mid-contract terminations of non-professional school employees may be submitted to binding arbitration and that the Board's arguments go to the merits of the grievance which are more appropriately presented to an arbitrator.

The Board seeks a restraint of arbitration asserting that there is was no contractual violation. We cannot consider that argument. Ridgefield Park.

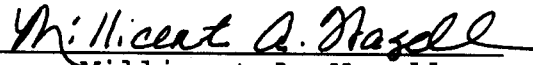
The Board has not asserted that a managerial prerogative or that a statute or regulation prevents this grievance from being submitted to binding arbitration. Local 195, IFPTE v. State, 88 N.J. 393 (1982). A long line of cases has declined to restrain binding arbitration of mid-year contract terminations of non-professional school employees. See, e.g., Bloomfield Bd. of

Ed., P.E.R.C. No. 99-53, 25 NJPER 38 (¶30014 1998); Hunterdon Central Req. H.S. Bd. of Ed., P.E.R.C. No. 94-75, 20 NJPER 68 (¶25029 1994), aff'd 21 NJPER 46 (¶26030 App. Div. 1995), certif. den. 140 N.J. 277 (1995); East Orange Bd. of Ed., P.E.R.C. No. 94-15, 19 NJPER 446 (¶24209 1993); Dumont Bd. of Ed., P.E.R.C. No. 93-17, 18 NJPER 450 (¶23202 1992); Emerson Bd. of Ed., P.E.R.C. No. 92-85, 18 NJPER 102 (¶23047 1992); Evesham Tp. Bd. of Ed., P.E.R.C. No. 92-63, 18 NJPER 46 (¶23019 1991); Eatontown Bd. of Ed., P.E.R.C. No. 89-101, 15 NJPER 261 (¶20109 1989); Eatontown Bd. of Ed., P.E.R.C. No. 88-144, 14 NJPER 466 (¶19195 1988). The employer has made no negotiability argument distinguishing these cases.

ORDER

The request of the Tinton Falls Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002
Trenton, New Jersey
ISSUED: May 31, 2002