

P.E.R.C. NO. 92-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-34

MANVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Manville Education Association against the Manville Board of Education. The grievance claims that the Board violated the parties' collective negotiations agreement when it terminated an aide for excessive absenteeism. The Commission finds that the Association cannot prevent the Board from reducing the size of its workforce by claiming that a layoff was without just cause. The Association does not claim a violation of any procedural rights, such as the right to be laid off by seniority, that are severable from the employer's right to reduce the size of its workforce.

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Appearances:

For the Petitioner, Cassetta, Taylor and Whalen,
consultants (Garry M. Whalen, consultant)

For the Respondent, John A. Thornton, Jr.,
NJEA Field Representative

DECISION AND ORDER

On September 17, 1991, the Manville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Manville Education Association. The grievance claims that the Board violated the parties' collective negotiations agreement when it terminated an aide for excessive absenteeism.

The parties have filed briefs and documents.^{1/} These facts appear.

The Association represents certain Board employees including classroom aides. The parties entered into a collective negotiations agreement effective from July 1, 1988 to June 30, 1991. The grievance procedure ends in binding arbitration.

^{1/} The Association has established good cause for filing an untimely brief.

Barbara Razzano was employed by the Board as an instructional aide. On April 29, 1991, the Board abolished two instructional aide positions and voted not to rehire Razzano and Sandra Joyce for the 1991-92 school year. On May 23, the Association grieved Razzano's termination, claiming violations of numerous contract provisions including Article IV, Employee Rights. Section C of that article provides:

No employee shall be disciplined, reprimanded, reduced in rank or compensation or given an adverse evaluation of professional services without just cause. This provision does not apply to the renewal of nontenure contracts.

The Association claims that Razzano was told that the reason she was selected to be laid off was because of her absenteeism which was related to an on-the-job injury.

On May 31, 1991, the Superintendent denied Razzano's grievance stating that a nonrenewal due to a reduction in force is not grievable. He claimed that the just cause standard does not apply. The Board denied the grievance for the same reasons and the Association demanded binding arbitration. This petition ensued.

The Board claims that the nonrenewal of an employee due to a reduction-in-force is non-negotiable and non-arbitrable. The Association claims that aides are offered reemployment each year unless there has been just cause for termination. It does not challenge the Board's right to reduce its force, but instead alleges a lack of just cause for the selection of Razzano.

A school board has a managerial prerogative to reduce the size of its workforce. State v. State Supervisory Employees Ass'n,


78 N.J. 54, 88 (1978). But layoff procedures that are not preempted by statute or regulation are mandatorily negotiable. Ibid. Similarly, a board has a right to initiate discipline. But school board employees have a right to challenge disciplinary determinations in binding arbitration unless they have an alternate statutory appeal procedure. N.J.S.A. 34:13A-5.3 and 29.

The Association cannot prevent the Board from reducing the size of its workforce by claiming that a layoff was without just cause. The Association does not dispute that the Board reduced the number of aide positions by two. It also does not claim a violation of any procedural rights, such as the right to be laid off by seniority, that are severable from the employer's right to reduce the size of its workforce. Contrast Lyndhurst Bd. of Ed., P.E.R.C. No. 87-111, 13 NJPER 271 (¶18112 1987), aff'd App. Div. Dkt. No. A-3924-86T8 (5/25/88). It simply claims that this employee was chosen to be laid off because of poor attendance. The essence of this dispute concerns the Board's right to reduce the size of its workforce. Accordingly, we must restrain arbitration.

ORDER

The Manville Board of Education's request 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: January 30, 1992
Trenton, New Jersey
ISSUED: January 31, 1992