

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERNARDSVILLE BOROUGH BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-96

BERNARDSVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Bernardsville Education Association against the Bernardsville Borough Board of Education to the extent the grievance seeks payment of a stipend for the position of science area specialist for the 1994-1995 school year. The Board had a prerogative to decide not to fill the position of science area specialist for that year. The Commission declines to restrain binding arbitration of grievances contesting the Board's failure to pay an employee for summer curriculum work and summer SITE work.

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, Schwartz Simon Edelstein Celso & Kessler, attorneys (Lawrence S. Schwartz, of counsel; Mark A. Tabakin, on the brief)

For the Respondent, Klausner & Hunter, attorneys (Stephen E. Klausner, of counsel)

DECISION AND ORDER

On April 27, 1995, the Bernardsville Borough Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of grievances filed by a teacher represented by the Bernardsville Education Association. The grievances seek payment of stipends for three co-curricular positions.

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

The Association represents the Board's classroom teachers, co-curricular personnel, and various other employees. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of contractual disputes.

Loretta Lane is a fifth grade science teacher at the Board's middle school. On January 15, 1993, the superintendent sent her a memorandum entitled "Multi Year Behavior Pattern." The memorandum noted many concerns about her behavior and cited, as "the precipitating event," the superintendent's belief that Lane had made anonymous criticisms about him to the Montclair Board of Education when that board was considering his application to be its superintendent. The superintendent recommended that she "submit to a full psychiatric evaluation." She declined.

On January 26, 1993, the Board directed Lane to undergo a psychiatric examination. It also suspended Lane with pay, pending that examination.

Lane petitioned the Commission of Education to set aside her suspension and the order to take a psychiatric examination. The matter was transferred to the Office of Administrative Law. On September 1, 1993, the parties agreed that Lane would submit to an examination and that if she was found capable of performing her duties and mentally healthy, she would be reinstated to her position as a fifth grade science teacher and her co-curricular position as a science area specialist for the 1993-94 school year.

On September 9, 1993, the Board notified Lane that it had voted at its August 30, 1993 meeting to withhold her salary increase and increment for the 1993-94 school year. The Board's letter referenced a December 1992 memorandum from the

superintendent as the basis for the withholding. That memorandum is not in the record.

Lane then filed five grievances seeking payments of various forms and amounts of compensation. The first grievance sought payment of Lane's salary increase and increment for the 1993-94 school year. The second grievance sought payment of S.I.T.E. stipends -- \$800 for team planning and \$1,000 for S.I.T.E. summer science work. The third grievance sought payment of a stipend for a block-grant summer project. The fourth grievance sought payment of a tuition reimbursement claim arising during the 1992-93 school year. The fifth grievance sought payment of a stipend for the position of drama director for the 1992-93 school year. The Board denied these grievances.

On January 24, 1994, the Association demanded arbitration. The demand listed the grievance(s) to be arbitrated as: "Unjust discipline, withholding of salaries and stipends (L. Lane)." The Board responded by filing a scope of negotiations petition (SN-94-104) that is not the instant petition.

On April 26, 1994, a psychiatrist found Lane fit to work. He found "absolutely no evidence for a diagnosable psychiatric condition." He noted that Lane "has remained a gifted teacher, liked by her pupils and she poses no demonstrable danger to them."

On September 13, 1994, the Board and the Association signed a stipulation of settlement and release pertaining to the

arbitration claims. The Board agreed to reinstate Lane as a fifth grade science teacher for the 1994-95 school year, to restore her 1993-94 salary increase and increment, and not to withhold her 1994-95 salary increase and increment. In return, Lane and the Association withdrew the grievances and arbitration demands. The stipulation stated that it "does not affect Lane's right to seek payment for co-curricular stipends withheld by the Board as part of a possible award and/or settlement in the Federal action. However, Lane forever releases the Board from any and all liability for the co-curricular stipends independent of the Federal action."

The Board reinstated Lane as a fifth grade science teacher in September 1994. During her suspension, Lane did not serve in any co-curricular positions. While the Board reinstated her to her teaching position, it denied Lane's request to be reinstated as the science area specialist and left that position vacant.

On October 14, 1994, Lane filed five more grievances seeking various forms and amounts of compensation. The first grievance sought payment of a stipend for 1994 summer curriculum work (\$100). The second grievance sought payment of the stipends for 1994 S.I.T.E. work during the summer (\$1500) and the school year (\$500). The third grievance sought payment for 13 sick and personal days during the 1993-94 school year. The fourth grievance sought payment of the 1994-95 stipend for the position

of science area specialist, plus a reduced teaching load and payment for extra classes taught. The fifth grievance sought release time and pay for attending a deposition.

On November 7, 1994, the superintendent sustained the grievances seeking payments for sick leave and personal days and for attending the deposition. The other grievances were denied.

On March 31, 1995, the Association demanded arbitration. The demand lists these grievances to be arbitrated: "Failure to pay Grievant for (1) summer curriculum work, (2) Summer SITE work, and (3) Science Subject Area Specialist as per contract." 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 contractual merits of these grievances or any contractual defenses the Board may have. We specifically do not consider whether the parties' settlement of the earlier grievances constitutes a waiver of Lane's contractual right to file future grievances seeking co-curricular payments.

N.J.S.A. 34:13A-23 provides:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

N.J.S.A. 34:13A-22 defines "Extracurricular activities" as including "those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year." The parties agree that the summer positions fall within the coverage of N.J.S.A. 34:13A-22 and 23.

The Board contends that N.J.S.A. 34:13A-23 recognizes its right to establish the qualifications for the summer and S.I.T.E. positions and that Lane was per se disqualified from being appointed to those positions because she was "unavailable" for work given her suspension. But the Board itself suspended Lane and the Association has challenged the propriety of that disciplinary action. There is no dispute that Lane is otherwise qualified for each of these positions. An employer cannot negate the applicability of N.J.S.A. 34:13A-23 to an employee's claim to

hold and be paid for a co-curricular position by the simple expedient of suspending an employee.

The Board also asserts that Lane has no entitlement to be retained in any co-curricular position from year to year. However, N.J.S.A. 34:13A-23 permits the parties to negotiate over the terms and conditions of employment concerning extracurricular activities, including retention in extracurricular positions. Whatever right Lane may have had to continue in such a position depends upon the terms of the parties' collective negotiations agreement, a contractual issue we cannot address. Whether or not Lane was improperly denied a co-curricular position under the collective negotiations agreement is for the arbitrator to decide.

The Board finally asserts that it had a prerogative to decide not to fill the position of science area specialist for the 1994-1995 school year. We agree. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). We accordingly restrain arbitration of Lane's claim seeking payment for the stipend for that position for that school year.


ORDER

The request of the Bernardsville Borough Board of Education for a restraint of binding arbitration is granted to the extent the grievance seeks payment of the stipend for the position



of science area specialist for the 1994-1995 school year. The request for a restraint of arbitration is otherwise denied.

BY ORDER OF THE COMMISSION



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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 19, 1996  
Trenton, New Jersey  
ISSUED: January 19, 1996