

P.E.R.C. NO. 97-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-124

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Middletown Township Board of Education for a restraint of binding arbitration of a grievance filed by the Middletown Township Education Association. The grievance asserts that the Board violated its conflict of interest policy and the parties' collective negotiations agreement when it appointed Dennis Jackson interim superintendent of schools and further asserts that the conflict of interest policy should apply to all personnel or no personnel. The Commission finds that an arbitrator cannot interfere with the Board's right to appoint its interim superintendent. The Commission also finds the remaining aspects of the grievance relating to choice of evaluators and transfers are not mandatorily negotiable.

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, Kenney & Gross, attorneys
(Mark S. Tabenkin, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Kenneth I. Nowak, of counsel)

DECISION AND ORDER

On May 2, 1996, the Middletown Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Middletown Township Education Association. The grievance asserts that the Board violated its conflict of interest policy and the parties' collective negotiations agreement when it appointed Dennis Jackson interim superintendent of schools. It asks the Board to apply the policy to all personnel or no personnel.

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

The Association represents the Board's teachers and other non-supervisory professional employees. The parties entered into a collective negotiations agreement effective from July 1, 1993

through June 30, 1996. The agreement's grievance procedure ends in binding arbitration.

The Board has a conflict of interest policy which states, in part:

4. No person who is related to any administrator or supervisor as outlined in Paragraph 3 of this policy, may serve in any school district capacity which has a direct or indirect reporting responsibility to a related administrator or supervisor.

For example, since all school district personnel are ultimately under the authority of the Superintendent of Schools, no person so related to the Superintendent would be permitted by the terms of this policy to be employed by the Middletown Board of Education.

The Board appointed Dennis Jackson as its interim superintendent.^{1/} Jackson is the father of Doreen Cohen, a teacher in the district. When Jackson was appointed, all administrative and supervisory responsibilities concerning Cohen were transferred to an assistant superintendent who was to report any problems related to Cohen directly to the Board.

The Association's grievance alleges that the Board's appointment of Jackson as interim superintendent violates its conflict of interest policy. It asks that the policy be applied to all employees or no employees. If the policy is suspended, it asks for rescission of all actions taken to comply with the policy.

^{1/} In June 1996, Jackson was appointed superintendent.

The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Our scope of negotiations jurisdiction is narrow.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

The Board maintains that Jackson's appointment is a managerial prerogative and not arbitrable. The Association argues that its grievance does not challenge Jackson's appointment. Rather, the Association argues that the Board has refused to create special administrative structures for unit employees who have experienced similar conflicts. The Association points to a teacher who was involuntarily transferred when her husband was appointed as principal of her school. The Board allegedly refused the Association's request that an alternative evaluation chain of reporting be established to avoid a transfer.

The Association acknowledges that an arbitrator cannot interfere with the Board's right to appoint its interim superintendent. We also hold that the remaining aspects of the

grievance are not mandatorily negotiable or legally arbitrable. The Board has a prerogative to decide which supervisory employees will evaluate particular employees. See Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), aff'd 177 N.J. Super. 479 (App. Div. 1981), aff'd 91 N.J. 38 (1982). In addition, transfers of employees between work sites are not mandatorily negotiable and cannot be the subject of binding arbitration. N.J.S.A. 34:13A-25. Thus, the Association cannot challenge these types of applications of the conflict of interest policy through binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Acting Chair

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

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996