

P.E.R.C. NO. 92-67

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD  
OF EDUCATION

Petitioner,

-and-

Docket No. SN-91-28

RIDGEFIELD PARK EDUCATION  
ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Ridgefield Park Education Association against the Ridgefield Park Board of Education. The grievance contests a teacher's reassignment from a first grade to a fourth grade class and her loss of a unit leader position and stipend. The Commission finds that the reassignment was not a disciplinary response to the teacher's absenteeism and tardiness.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,  
Tischman, Epstein & Gross (James L. Plosia, Jr., of counsel)

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

DECISION AND ORDER

On October 31, 1990, the Ridgefield Park Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association. The grievance contests a teacher's reassignment from a first grade to a fourth grade class at the Roosevelt school and her loss of a unit leader position and stipend.

The parties have filed briefs, exhibits and affidavits. Neither party requested an evidentiary hearing. These facts appear.

The Association represents teachers and other Board employees. The parties entered into a collective negotiations

agreement effective from July 1, 1988 to June 30, 1991. The grievance procedure ends in binding arbitration.

Eileen Barber is a tenured elementary school teacher. During the 1989-90 school year she taught first grade at the Roosevelt school. She was also a primary unit leader that year and received a stipend of \$875.

On June 1, 1990, Barber's principal notified her that she would be reassigned to teach the fourth grade at the Roosevelt school. That same day the principal gave Barber her annual performance review. That review criticized Barber's absences and tardiness during the 1989-90 school year and recommended that she do everything possible to improve her attendance and punctuality.<sup>1/</sup> The review also noted other concerns, such as her use of numerical grades which first graders could not understand and a sporadic schedule of unit meetings. The report described as most important a deep concern over the poor performance of her class on the Stanford achievement test. Barber's strengths included creating an environment that motivated her students, planning lessons and activities, and heading her unit's project of revising report cards.

Given her reassignment, Barber could no longer be the primary unit leader. She did not apply for the position of unit

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<sup>1/</sup> The Association grieved these comments and sought their removal from the annual performance review. Today we restrained binding arbitration finding the comments to be evaluative opinions. P.E.R.C. No. 92-66,       NJPER       (¶       1991).

leader for grades 4-6, since an incumbent teacher had already been reappointed.

According to the Superintendent, the annual performance review and its comments on Barber's absenteeism and tardiness did not influence her reassignment. According to the Superintendent, that decision was based solely on the administration's perception that Barber could better serve students' needs by teaching fourth grade instead of first grade.

On June 28, 1990, the Association filed a grievance contesting Barber's transfer and loss of a unit leader position and stipend.

On September 10, 1990, the Board denied this grievance. It asserted that Barber had been reassigned, not transferred; that unit leader positions are advertised annually; that it had no obligation to continue any teacher as a unit leader, and that the principal had made an educational policy decision.

On September 18, 1990, the Association demanded binding arbitration. It described the dispute as involving a "disciplinary transfer resulting in loss of extra compensation position." This petition ensued.

The Board argues that it had a prerogative to reassign Barber under Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978). The Association asserts that the dispute is legally arbitrable under N.J.S.A. 34:13A-5.3 which permits agreements to arbitrate disciplinary disputes if the disciplined employee does not have an alternate statutory appeal procedure. It

asserts that Barber was disciplined for the absences and latenesses cited in the annual performance review.

Transfers and reassignments are generally not mandatorily negotiable. Local 195, IFPTE v. State; 88 N.J. 393 (1982); Ridgefield Park. But under the discipline amendment to N.J.S.A. 34:13A-5.3, an employer may agree to submit a disciplinary transfer or reassignment to binding arbitration absent an alternate statutory appeal procedure. We have found that transfers or reassignments were disciplinary in two cases. West New York Bd. of Ed., P.E.R.C. No. 91-94, 17 NJPER 248 (¶122113 1991); Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986). We have found that transfers and reassignments were not disciplinary in other cases. City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990); City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199 1986); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Bernardsville Bd. of Ed., P.E.R.C. No. 86-47, 11 NJPER 688 (¶16237 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985); Cape May Cty. Bridge Comm'n, P.E.R.C. No. 84-133, 10 NJPER 344 (¶15158 1984), aff'd App. Div. Dkt. No. 5186-83T6 (7/9/85).<sup>2/</sup>

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2/ N.J.S.A. 34:13A-25 provides: "Transfers of [school board] employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons." The parties agree that this statute does not apply to this intraschool reassignment. This statute does not restrict an employee's preexisting and additional right under N.J.S.A. 34:13A-5.3 to submit disciplinary disputes to agreed-upon grievances procedures which do not displace statutory appeal procedures. N.J.S.A. 34:13A-28.

We now consider whether Barber's reassignment was disciplinary. Under all the circumstances, we hold it was not.

The Association contends that Barber was reassigned because of the absenteeism and lateness concerns cited in the annual performance review. The Superintendent denies that the contents of the annual performance review were a factor in the reassignment and claims that the reassignment decision was made before the performance review was created. He asserts that the reassignment was instead based on a belief that Barber would be more effective teaching fourth grade. Even if the Association were correct and the reassignment decision was influenced by the concerns cited in the performance review, that document lists many concerns besides absences and lateness. One concern was Barber's using numerical grades which first grade students could not understand and which were not part of the primary unit's grading system. The most important concern was over the poor performance of her class on the Stanford achievement test. On this record, we cannot say that the reassignment was a disciplinary response to Barber's absenteeism and tardiness.<sup>3/</sup>

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<sup>3/</sup> Contrast Hudson Cty., P.E.R.C. No. 87-20. There the employer gave an employee a disciplinary warning for excessive absences and lateness and then relied upon that reason in changing the employee's shift. The shift change lasted only a few weeks and the employee was returned to her shift without explanation. These facts established that the shift change was a disciplinary response to excessive absences and lateness.


The Association contends that the reassignment should be viewed as disciplinary because Barber lost her unit leader position and stipend. We disagree. There is no specific indication that the Board meant to punish Barber for absenteeism and tardiness by removing her as primary unit leader. Further, the mere loss of a shift differential or premium pay opportunity, standing alone, does not evidence discipline. City of Atlantic City; Warren Cty; Oakland.

Because we are not persuaded on this record that the reassignment was disciplinary, we must restrain binding arbitration.

ORDER

The Board's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: Trenton, New Jersey  
December 19, 1991  
ISSUED: December 20, 1991