

P.E.R.C. NO. 83-159

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
BOROUGH OF SOUTH PLAINFIELD,

Petitioner,

-and-

Docket No. SN-83-70

SOUTH PLAINFIELD EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, acting pursuant to authority delegated to him by the full Commission, denies the request of the Board of Education of the Borough of South Plainfield for a permanent restraint of arbitration of a grievance filed by the South Plainfield Education Association. The Chairman concluded that the predominant issues in dispute involve the Association's contentions that the Board failed to provide written notification and reasons for non-renewal of a golf coach. These procedural issues are mandatorily negotiable.

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Appearances:

For the Petitioner, King, King & Goldsack, Esqs.
(Victor E.D. King, of Counsel)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On February 10, 1983, the Board of Education of the Borough of South Plainfield ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance the South Plainfield Education Association ("Association") had filed against the Board. The grievance asserts that the Board violated its collective negotiations agreement with the Association when it did not give a golf coach timely notice that his contract would not be renewed.

Both parties have submitted briefs and accompanying exhibits. These documents establish the following facts.

The Association is the majority representative of all full-time certified personnel of the Board including teachers. The Board and the Association have entered an agreement effective

July 1, 1981 through June 30, 1983. That agreement contains a grievance procedure which culminates in binding arbitration.

On or about October 26, 1982, Harold Wyckoff filed a grievance claiming that the Board violated its contract with the Association when it failed to notify him in writing that his contract to coach golf was not being renewed and failed to set forth the reasons for this non-renewal. The Association relied, in part, upon a document entitled Administrative Procedure which the superintendent signed and which was to be effective September 1, 1982. This document required written notification of non-renewal of a coach and a statement of reasons upon request.

The principal initially denied the grievance because, allegedly, Wyckoff had been informed by telephone that a better candidate had been appointed, coaching positions were non-tenured and do not require written notification of non-renewal, and the Administrative Procedure was not effective at the time of his non-renewal. The superintendent also denied this grievance because, he asserted, the matter was non-grievable and a written statement of reasons for non-renewal had been provided. The Board refused to hold a hearing on this grievance.

On January 7, 1983, the Association filed a demand for arbitration. It described the nature of the dispute as "lack of written notification of non-renewal of coaching contract and reason thereof for this action" and the remedy sought was "compensation and such other relief as deemed applicable." The Board responded with the instant petition.

The Board asserts that the predominant issue involves its managerial prerogative to select a golf coach and that the Association is seeking to have Wyckoff reinstated. It further asserts that the Association belatedly raised the procedural issues concerning the provision of a written notice and statement of reasons as a means to obtain arbitration. It relies upon In re Bridgewater-Raritan Bd. of Ed., P.E.R.C. No. 82-2, 8 NJPER 428 (¶13198 1982) ("Bridgewater-Raritan").

The Association contends that it has at all times sought to grieve and arbitrate the procedural issues of whether the Board was obligated to give Wyckoff written notice and a statement of reasons for non-renewal and whether the Board in fact did so. The Association states that it will stipulate that the arbitrator lacks authority to reinstate Wyckoff to the position of golf coach. It relies upon such cases as Bethlehem Township Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, 91 N.J. 38 (1982) ("Bethlehem") and In re Edison Twp. Bd. of Ed., P.E.R.C. No. 83-40, 8 NJPER 599 (¶13281 1982) ("Edison") as establishing the negotiability of evaluation and reappointment procedures as opposed to criteria.

At the outset of my analysis, I set forth the limits of the Commission's scope of negotiations jurisdiction:

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.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, in the instant case, I will consider only whether the Association's claimed rights to written notice and reasons for non-renewal is within the scope of negotiations.^{1/} I will express no opinion on whether such a right actually exists or, if it does, whether the Board fulfilled its obligation.

Based on the record, particularly the documents reflecting the history of the grievance, I find that the Association has at all times asserted that the Board failed to give written notification and reasons for Wyckoff's non-renewal. Unlike Bridgewater-Raritan, the Association has not sought to challenge the criteria the Board used to select a coach or to have an arbitrator substitute his judgment concerning employee qualifications for the Board's judgment; instead the only issues raised by the grievance documents are the procedural ones of the claimed rights to written notice and a statement of reasons for non-renewal. Further, the Association has withdrawn any claim to reinstatement. Under these circumstances, and having been delegated the authority to decide this matter by the full Commission, I find that the predominant issue in dispute clearly relates to mandatorily negotiable procedures which do not significantly interfere with any managerial

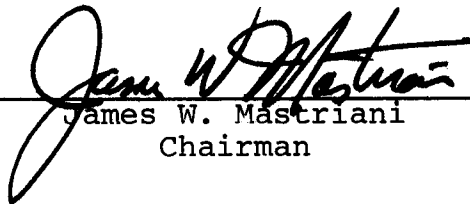
^{1/} In making this abstract decision, I accept the Association's concession for the purposes of this dispute that the arbitrator lacks authority to order reinstatement if he finds a violation.

prerogatives. Bethlehem; Edison; In re Twp. of Old Bridge Bd. of Ed., P.E.R.C. No. 83-60, 9 NJPER 12 (¶14004 1982), appeal pending, App. Div. Docket No. A-1863-82T2.

ORDER

The South Plainfield Board of Education's request for a permanent restraint of arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Dated: Trenton, New Jersey
June 6, 1983