

P.E.R.C. NO. 93-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KENILWORTH BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-38

KENILWORTH EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Kenilworth Education Association against the Kenilworth Board of Education. The grievance alleges that Board violated the parties' collective negotiations agreement when it did not appoint the teacher who held the position of boys' basketball coach to the position of girls' basketball coach as well. The Commission believes that N.J.S.A. 34:13A-23 permits the Board to determine that a teacher appointed to coach one basketball team is not qualified to coach another basketball team during the same season.

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Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, attorney)

DECISION AND ORDER

On November 19, 1992, the Kenilworth Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Kenilworth Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it did not appoint the teacher who held the position of boys' basketball coach to the position of girls' basketball coach as well.

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

The Association represents the Board's non-supervisory certificated personnel. The parties entered into a collective negotiations agreement effective from July 1, 1990 through June 30,

1993. The grievance procedure ends in binding arbitration of grievances challenging the agreement's interpretation and/or application.

Jeffrey Kaltreider is a tenured teaching staff member employed at the Harding School. In the fall of 1992, he applied for two extracurricular positions at the junior high school level: boys' basketball coach and girls' basketball coach. Each position carries a stipend of \$1384. According to the Association, the Board has several times appointed one in-district teacher to coach both the cheerleading program and the girls' basketball teams during the same season; it asserts that the Board likewise could have appointed one teacher to coach both basketball teams and the coach could then stagger practices and games.

Kaltreider was appointed to the position of boys' basketball coach. But his request to coach the girls' basketball team as well was denied. Instead Kathy Finizio, an out-of-district certified math teacher, was reappointed.^{1/}

On October 6, 1992, the Association filed a grievance on Kaltreider's behalf. The grievance asserts that, as a Harding School teacher and a qualified volunteer, Kaltreider was entitled to the position of girls' basketball coach. It also asserts that the appointment of an out-of-district applicant violated New Jersey

^{1/} Finizio was first appointed to coach the girls' basketball team the year before; Kaltreider had unsuccessfully applied for that position, but did not grieve that decision.

State Law and would result in scheduling inequities violating federal affirmative action regulations. The grievance sought Kaltreider's appointment and/or payment of the stipend.

On October 15, 1992, the Superintendent wrote Kaltreider a letter denying the grievance. The letter stated, in part:

It is my contention and the contention of the Board of Education that you have not been denied a basketball coaching position since the Board appointed you as boys basketball coach for the upcoming season. I see your coaching of two teams during the same season as a potential conflict of time. It would be very difficult for you to manage two programs equally during the same time-span. For these reasons I believe that it would be in the best interests of the players to have two different coaches who are focused totally on one team each.

The Board sustained the denial of the grievance.

On November 12, 1992, the Association demanded binding arbitration. This petition ensued.

Our 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]

Thus, we do not consider the contractual merits of the Association's grievance or any contractual defenses the Board may have.

Before 1990, appointments and non-reappointments to coaching positions were not mandatorily negotiable or legally arbitrable. Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983). Effective January 4, 1990, however, the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., was supplemented to include this language:

All aspects of assignments to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations...except that the establishment of qualifications for such positions shall not constitute a mandatory subject of 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....
[N.J.S.A. 34:13A-23]

In Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991), we applied this amendment to permit arbitration over the non-retention of a coach of the basketball and baseball teams. Unlike Holmdel, however, the instant case involves an initial decision not to appoint, not a subsequent refusal to reappoint, and two same-season coaching positions.

While almost all aspects of extracurricular arrangements are now mandatorily negotiable, the statute specifies that the qualifications for such positions are not negotiable. We believe that this statutory proviso applies to the Board's determination in this case that a teacher appointed to coach one basketball team is not qualified to coach another basketball team during the same

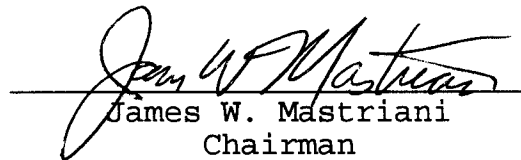
season. The Board may decide without negotiations that its students' best interests warrant having separate coaches focus on separate teams and that it should not stagger practices and games to permit one teacher to coach two teams.^{2/}

The Association and the Board disagree as to the meaning and application of education regulations concerning the appointment of out-of-district coaches. The proper place to resolve such a dispute over these education regulations is before the Commissioner of Education. Similarly, any alleged violation of affirmative action regulations must be presented to another agency. Teaneck.

ORDER

The request of the Kenilworth Board of Education 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. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Smith abstained.

DATED: March 29, 1993
Trenton, New Jersey
ISSUED: March 30, 1993

^{2/} There is no indication in the record that the decision not to appoint Kaltreider was in any way disciplinary.