

P.E.R.C. NO. 93-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL
DISTRICT FOR THE CITY OF
JERSEY CITY, HUDSON COUNTY,

Petitioner,

-and-

Docket No. SN-93-4

JERSEY CITY EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Jersey City Education Association against the State-Operated School District for the City of Jersey City, Hudson County. The grievance contests the abolishment of two positions. Whether N.J.S.A. 18A:7A-44 authorized the District to abolish the positions or whether the two employees have a claim that the District violated their tenure rights, these educational claims must be presented to the Commissioner of Education.

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Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys
(Robert E. Murray, of counsel; Regina Waynes Joseph, on the
brief)

For the Respondent, Feintuch, Porwich & Feintuch, attorneys
(Philip Feintuch, of counsel)

DECISION AND ORDER

On July 14, 1992, the State-Operated School District for
the City of Jersey City, Hudson County petitioned for a scope of
negotiations determination. The District seeks a restraint of
binding arbitration of a grievance filed by two employees
represented by the Jersey City Education Association. The grievance
contests the abolishment of two positions.

The parties have filed certifications, exhibits, and
briefs.^{1/}

^{1/} The Association's materials were untimely, but we will accept
them for filing given the reasons for untimeliness in the
certification of the Association's attorney.

The Association and the Jersey City Board of Education, the District's predecessor, entered into a collective negotiations agreement effective from September 1, 1988 to August 31, 1991. Under that contract, the Association represented the Board's teachers. The contract's grievance procedure ends in binding arbitration.

On October 4, 1989, the New Jersey State Board of Education removed the Board and created the District in its stead. A State District Superintendent was appointed. Pursuant to N.J.S.A. 18A:7A-40, the collective negotiations agreement remained in force.

N.J.S.A. 18A:7A-44 provides, in part:

c. Notwithstanding any other provision of law or contract, the positions of central administrative and supervisory staff, instructional and non-instructional, other than those positions abolished pursuant to subsection a. of this section, shall be abolished upon the reorganization of the State-Operated School District Staff. The State District Superintendent may hire an individual whose position is so abolished, based upon the evaluation of the individual and the staffing needs of the reorganized district staff.... Employees or officers not hired for the reorganized staff shall be given 60 days notice of termination or 60 days pay. The notice or payment shall be in lieu of any other claim or recourse against the employing board or school district based on law or contract.... Any employee whose position is abolished by operation of this subsection shall be entitled to assert a claim to any position or to placement upon a preferred eligibility list for any position to which the employee may be entitled by virtue of tenure or seniority within the district. No employee whose position is abolished by operation of this subsection shall retain any right to tenure or seniority in the positions abolished herein.

Pursuant to this section, the Superintendent reorganized the District's central administrative and supervisory staff and evaluated all individuals employed in such positions.

On April 4, 1990, the District abolished all central administrative and supervisory staff positions. One position abolished was Business Industry Services Liaison. That position had been held by four employees, including Russell W. Betz and Richard R. Salzer who worked at Snyder High School and Lincoln High School respectively. These employees had worked eleven months a year and received extra compensation for the eleventh month. Pursuant to N.J.S.A. 18A:7A-44, Betz and Salzer were given 60 days' pay.

According to the District's State Executive Assistant, the position of Business Industry Services Liaison was a central administrative or supervisory position. According to Betz and Salzer, no supervisory or administrative credentials were required and the position was really a teaching position requiring them to work directly with high school students.

Having abolished the position of Business Industry Services Liaison and having decided not to offer Betz and Salzer positions in its reorganized staff, the District offered Betz and Salzer positions as teachers. Betz and Salzer were entitled to those positions pursuant to their seniority and tenure rights. In their positions as teachers, Betz and Salzer worked ten months a year.

On August 7, 1990, Betz and Salzer filed a grievance. The grievance asserted that the District violated the collective

negotiations agreement when it removed them from the position of Business Industry Services Liaison. The grievance added that their removals had caused them to lose 10% of their income.

The District denied the grievance. It asserted that it had reorganized its staff pursuant to N.J.S.A. 18A:7A-44 and that this statute superseded all other statutes, rules, regulations, and contracts. The Association then demanded binding arbitration. This petition ensued.

The District asserts that N.J.S.A. 18A:7A-44 mandated abolishing the position of Business Industry Services Liaison and thus preempts arbitration of this grievance. It adds that the aggrieved employees must pursue any claims for relief before the Commissioner of Education. The Association responds that N.J.S.A. 18A:7A-44 does not apply because Business Industry Services Liaison was not a central administrative or supervisory staff position.

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.

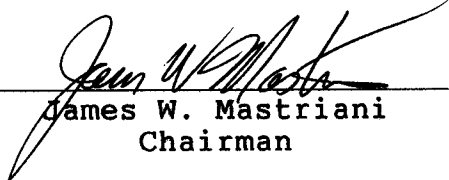
Thus, we do not consider the grievance's contractual merits or any contractual defenses the District may have.

The parties disagree over whether N.J.S.A. 18A:7A-44 authorized the District to abolish the grievants' positions. If the statute authorized that action, then arbitration of the grievance is preempted. If the statute did not authorize that action, then it would appear that the District may have violated the grievants' tenure rights under the education statute. In either case, the grievants must present their educational law claims to the Commissioner of Education for resolution.

ORDER

The request of the State-Operated School District for the City of Jersey City, Hudson County for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Wenzler was not present.

DATED: February 22, 1993
Trenton, New Jersey
ISSUED: February 23, 1993