

P.E.R.C. NO. 89-107

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EATONTOWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-11

EATONTOWN SUPPORTIVE STAFF  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Eatontown Board of Education's request for a stay of P.E.R.C. No. 89-101 pending appeal. That decision denied a restraint of binding arbitration of a grievance challenging the non-renewal of a bus driver when it was undisputed that the basis for the non-renewal and the basis for an already proven unjust discharge were the same. As a technical matter, the Commission did not order any relief concerning issues on appeal that can be stayed. On the assumption that the Commission has power to entertain the motion for a stay, it is denied because irreparable harm would not be caused by having the process of arbitration go forward.

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Appearances:

For the Petitioner, Gagliano, Tucci, Iadanza & Reisner,  
P.C. (Eugene A. Iadanza, of counsel; Ann F. Halton, on the  
brief and on the motion)

For the Respondent, Marc D. Abramson, NJEA UniServ  
Representative

DECISION AND ORDER

On April 26, 1989, the Eatontown Board of Education requested a stay pending appeal of P.E.R.C. No. 89-101. That decision denied a restraint of binding arbitration of a grievance challenging the non-renewal of a bus driver when it was undisputed that the basis for the nonrenewal and the basis for an already proven unjust discharge were the same.

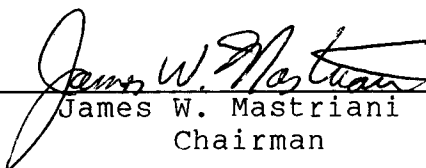
As a technical matter, we did not order any relief concerning issues on appeal that can be stayed. We denied a request for a restraint of binding arbitration but did not order that arbitration proceed. Any obligation to arbitrate flows from the parties' agreement, not our order.

On the assumption that we have power to entertain the motion for a stay, it is denied. We determined that Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112 (1985) and the discipline amendment, N.J.S.A. 34:13A-5.3, permit (but do not require) an employer to agree contractually that it will not base a reemployment decision on considerations already found to be unjust in a discharge appeal. We could not decide whether the parties' contractual just cause provision encompasses this dispute or whether the employer had just cause to discontinue this driver's employment. Those issues are reserved to the arbitrator. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). Irreparable harm would not be caused by having the process of arbitration go forward. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 325-26 (1979).

ORDER

The request for a stay of P.E.R.C. No. 89-101 pending appeal is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
April 28, 1989  
ISSUED: April 28, 1989