

P.E.R.C. NO. 86-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF PLAINFIELD

Petitioner,

-and-

Docket No. SN-86-21

PLAINFIELD EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Board of Education of the City of Plainfield to restrain binding arbitration of a grievance that the Plainfield Education Association filed against the Board. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it refused to renew a custodian employee's contract. The Commission, relying on Wright v. Board of Education of the City of East Orange, 99 N.J. 112 (1985), holds that tenure and job security are mandatorily negotiable terms and condition of employment.

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Appearances:

For the Petitioner, King, King and Goldsack, Esqs. (Victor D. King, Of Counsel)

For the Respondent, Oxfeld, Cohen & Blunda, Esqs. (Nancy Iris Oxfeld, Of Counsel)

DECISION AND ORDER

On September 24, 1985, the Board of Education of the City of Plainfield ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance that the Plainfield Education Association ("Association") seeks to submit to binding arbitration. The grievance asserts that the Board violated its collective negotiations agreement with the Association when it refused to renew a custodial employee's contract.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's teachers, co-curricular personnel, supportive staff and office staff. The Board and Association are parties to a collective

negotiations agreement with a grievance procedure that ends in binding arbitration.

The custodian worked for 15 years prior to May 31, 1984. On that date, he was allegedly involved in a sexual assault on a ten year old female student. The Board immediately suspended him and did not offer him a contract for the 1984-85 school year. He was later indicted, but was found not guilty by a Superior Court jury on January 30, 1985.

On July 16, 1985, the Association presented a grievance to the Board demanding the employee's reinstatement. The grievance alleged that the Board's decision to not reinstate him violated a just cause termination clause in the collective negotiations contract. That clause provides:

A. No employee shall be removed from his/her position after the probationary period, or be given a written reprimand or be reduced in compensation or have an increment withheld without just cause.

On August 7, 1985, the Board denied the grievance. The Association then filed a demand for arbitration. The demand listed "just cause and due process" contractual violations as the nature of the dispute, and asked for the custodian's reinstatement and back pay. The instant petition ensued.

The Board concedes that it could arbitrate whether the employee's suspension for the rest of the 1983-1984 school year was for just cause, but asserts that it has a managerial prerogative to not rehire or reinstate an employee at the expiration of a specified contractual period.

The Association contends that the dispute involves discipline of an employee who does not have an alternate statutory appeal procedure within the meaning of N.J.S.A. 34:13A-5.3. Such employees, the Association argues, may arbitrate whether they were dismissed for just cause.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144, 154 (1978) the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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 Association's contractual claims or the Board's defenses.

We agree with the Board that this dispute may involve two issues: (1) whether the custodian was suspended for just cause; and (2) whether the Board had a right to not rehire him for the 1984-1985 school year.^{1/} However, we find that both issues are

^{1/} It is not clear whether the Board separately considered the suspension and its refusal to grant the custodian a 1984-1985 contract.

mandatorily negotiable and arbitrable.

The suspension of an employee without an alternate statutory appeal procedure is reviewable through binding arbitration. See East Brunswick Board of Education and East Brunswick Education Ass'n, P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-83T6, certif. den. 101 N.J. 280 (1985). See also Bergen County Law Enforcement Group v. Bergen County Board of Chosen Freeholders, 191 N.J. Super. 319 (App. Div. 1983); CWA v. P.E.R.C., 193 N.J. Super. 658 (App. Div. 1984). In addition, a public employer and its employees' representative may agree to bestow tenure or other forms of job security for custodians. In Wright v. Board of Education of the City of East Orange, 99 N.J. 112 (1985) the Supreme Court noted that N.J.S.A. 18A:17-3 gave a Board of Education the authority to either bestow tenure instantly upon a custodian, or to provide for no tenure at all. Since the Court found that tenure or job security was a mandatorily negotiable term and condition of employment, the discretion afforded by the statute could be exercised through collective negotiations. The Court found a contract article guaranteeing all employees tenure after three years service to be mandatorily negotiable and arbitrable. See also Woodbridge Tp. Bd. of Ed. v. Plumbers & Steamfitters Local No. 270, Carpenters Local No. 65 and Painters Local No. 144, P.E.R.C. No. 77-51, 3 NJPER 149 (1977), aff'd 159 N.J. Super. 83 (App. Div. 1978). Thus, the Association and the Board could have validly agreed that custodians

were entitled to a form of tenure; i.e. to be rehired from year to year absent just cause.^{2/}

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Reid abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
April 18, 1986
ISSUED: April 21, 1986

^{2/} We of course do not decide whether the agreement provides such protection to custodians nor do we decide whether there was just cause for the Board to suspend or refuse to rehire the custodian. Whether the collective negotiations agreement affords the employee any job security under the present circumstances is a proper subject of arbitration.