

P.E.R.C. NO. 97-140

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HIGH BRIDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-101

HIGH BRIDGE TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially grants the request of the High Bridge Board of Education for a restraint of binding arbitration of a grievance filed by the High Bridge Teachers Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it unjustly discharged a non-tenured teacher before the school year ended. The Commission grants a restraint of binding arbitration to the extent the grievance seeks reinstatement of the teacher or monetary damages beyond the 1992-1993 school year. The Commission denies the request for a restraint to the extent the grievance seeks payment between May 21, 1993 and the end of the 1992-1993 school year based on the Association's claim that the Board retaliated against the teacher for filing a formal complaint.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth,  
consultants (Bruce Taylor, consultant)

For the Respondent, Klausner & Hunter, attorneys  
(Stephen E. Klausner, of counsel)

DECISION AND ORDER

On June 1, 1995, the High Bridge Board of Education petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the High Bridge Teachers' Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it unjustly discharged a non-tenured teacher before the school year ended.

The parties have filed exhibits and briefs and the Board has submitted an affidavit executed by its superintendent. These facts appear.

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1993.

Article XIV is entitled Miscellaneous Provisions. Section C reserves the Board's right "for just cause, to suspend, demote, discharge or take other disciplinary action...." The grievance procedure ends in binding arbitration of alleged violations, misapplications, or misinterpretations of the parties' contract.

The Board hired Susan Loring as a music teacher for the 1992-1993 school year. Loring and the Board executed an individual employment contract. That contract stated that it could be terminated by either party upon giving 60 days' written notice of that party's intention to terminate the contract.

Between September 1992 and March 1993, the elementary and middle school principals observed several music classes taught by Loring and prepared informal and formal evaluation reports. Some of Loring's instructional techniques were praised, but others were criticized.

Loring submitted responses stating, among other things, that her teaching had suffered because she was not given enough time to travel between classes in the two schools and because other teachers had not brought students to class or picked them up on time. On January 4, 1993, she complained to the elementary school principal about not having enough travel time and about having to teach an overcrowded and possibly unsafe "double class" of combined second grade classes. On that same date, she responded to the superintendent's scheduling survey and reiterated her desires to have more travel time and smaller classes. According to the

Association's brief, Loring's relationship with the two principals then began to worsen.

On March 8, 1993, the two principals sent the superintendent a memorandum. It stated:

We are recommending that Mrs. Susan Loring be advised that her contract will be terminated in sixty (60) days. We feel that Mrs. Loring has not, nor will she be able to meet the expectancy criteria as prescribed by the established indicators of effective teaching.

Our observations/evaluations of Mrs. Loring's teaching performances reflect behaviors that we judged to be unacceptable or in need of improvement, particularly in the area of classroom management/discipline. Mrs. Loring has received this rating from both of us as building administrators. Recommendations for improvement have been cited however, improvements have been negligible.

When cited as needing improvement, Mrs. Loring, during post evaluation discussions, has been argumentative, defensive, and unwilling to take criticisms in a constructive manner.

Despite informal and formal conferences held with Mrs. Loring and the recommendations and suggestions that have been outlined, Mrs. Loring's ability to function in the classroom has not improved in an acceptable manner. Both building administrators feel that Mrs. Loring will not be able to meet the instructional demands of her position as the school year comes to a close. Therefore, we are strongly recommending dismissal at this time.

The Association asserts that this recommendation was made to retaliate against Loring for her complaints.

On March 11, 1993, the principals met with Loring, discussed her "performance in meeting the district's minimal levels of expectancy criteria," and notified her of their recommendation.

On March 22, 1993, the Board terminated Loring's contract for the 1992-1993 school year, effective in 60 days. The Board chose to have Loring continue to teach during that 60 day period. Her last day of work was May 21, 1993.

On March 29, 1993, the Association filed a grievance asserting that Loring's termination violated the contractual provision requiring just cause for a discharge. The grievance sought reinstatement and back pay. The superintendent and the Board denied this grievance.

On June 29, 1993, the Association demanded arbitration. It identified the dispute as "Unjust discipline/termination/lack of just cause." An arbitration hearing was held on March 1, 1994, but further proceedings were held in abeyance until this petition was filed and decided.

The Board acknowledges that mid-contract terminations of professional employees for disciplinary reasons have been found to be arbitrable. See, e.g., Hunterdon Central Reg. H.S. Dist., P.E.R.C. No. 92-92, 18 NJPER 134 (¶23064 1992). It argues, however, that this termination was based on evaluative judgments and therefore arbitration should be restrained.

The Association asserts that the Board retaliated against Loring for filing her January 4, 1993 complaint and did not base its decision on good faith evaluative judgments. It contends that her negative observations were retaliatory, and therefore disciplinary, rather than truly evaluative.

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 cannot consider the contractual merits of this grievance or any contractual defenses the Board may have. We specifically decline to consider whether Article XIV applies to this discharge or whether the Board had just cause to fire Loring.

The grievance seeks Loring's reinstatement. We will restrain arbitration over that aspect of the grievance since sustaining it would effectively grant Loring a new contract after her contract year had expired. For the same reason, we will restrain arbitration over any back pay claim extending beyond Loring's contract year. See Hunterdon Central Reg. H.S. Dist., P.E.R.C. No. 92-92, 18 NJPER 134 (¶23064 1992) (invalidating part of arbitration award granting reinstatement and back pay after contract had expired since effect of award would be to grant tenure).

Given these restraints, the remaining legal issue is narrow: is the Association's claim that the Board retaliated against Loring for filing a formal complaint and that she should therefore be paid for the rest of the contract year legally

arbitrable? And the possible remedy appears narrow as well: payment for the period between May 21, 1993 (the last day Loring worked) and the end of the 1992-1993 school year.

Under the 1982 "discipline amendment" to N.J.S.A. 34:13A-5.3, the Association may arbitrate its claim that the Board retaliated against Loring because she complained. The arbitrator will be reviewing the merits of the Association's retaliation claim rather than second-guessing the Board's evaluative judgments.<sup>1/</sup> We repeat that the arbitrator cannot order reinstatement or back pay beyond the 1992-1993 contract year.

ORDER

The request of the High Bridge Board of Education for a restraint of binding arbitration is granted to the extent the grievance seeks reinstatement of Susan Loring or monetary damages beyond the 1992-1993 school year. The request is denied to the extent the grievance seeks payment between May 21, 1993 and the end of the 1992-1993 school year based on the Association's claim that the Board retaliated against Loring for filing a complaint.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 29, 1997  
Trenton, New Jersey  
ISSUED: May 30, 1997

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<sup>1/</sup> Given the Association's retaliation claim, we need not address the Board's broader argument concerning the legal arbitrability of mid-contract terminations indisputably based on evaluative judgments.