

P.E.R.C. NO. 84-154

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-60

LOCAL UNION NO. 866, INTERNA-
TIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which Local Union No. 866, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO filed against the Elizabeth Board of Education. The grievance challenged the Board's substantive decision to transfer an employee from the position of head custodian at one school to the position of head custodian at another. That decision is non-negotiable under well-settled case law.

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Appearances:

For the Petitioner, Murray & Granello, Esqs.
(James P. Granello, of Counsel, Stephen E. Trimboli,
on the Brief)

For the Respondent, Goldberger & Finn, Esqs.
(Howard A. Goldberger, of Counsel)

DECISION AND ORDER

On February 21, 1984, the Elizabeth Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance which Local Union No. 866, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("Local No. 866") has filed on behalf of Dennis Ryan. The grievance challenges Ryan's transfer from the position of head custodian in School #2 to the same position in School #13.

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

Local No. 866 is the majority representative of certain Board employees including head custodians. The Board and Local No. 866 entered a collective negotiations agreement effective from July 1, 1981 through June 20, 1982; following the expiration of that contract they entered a memorandum of agreement extending the contract (with some changes immaterial to this proceeding) through June 30, 1985. The parties' grievance procedure ends in binding arbitration. Article VI states that the employer has the right to transfer employees. Article XIX allows employees to request lateral transfers, but also states that this paragraph does not limit the employer's rights under Article VI.

From September 11, 1981 until June 28, 1983, Dennis Ryan was the head custodian at School #2. During the spring of 1983, Ryan was notified that he was going to be transferred to the position of head custodian at School #13. Local No. 866 then filed a grievance alleging that the transfer violated Articles XIX, Paragraphs E and F.^{1/} The grievance further alleged that

1/ These paragraphs provide:

E. The successful bidder shall receive a trial period of sixty (60) days on his new assignment. Such employee shall be compensated at the rate of pay of his new classification. The employee's new pay rate shall be the rate step within the new classification which is immediately higher than his old rate step.

F. The Union and the Employee shall be kept advised of the progress or lack of progress made in learning the new assignment. If the employee fails to successfully meet these requirements within the probationary period, he shall be returned to his former classification and shall assume seniority and pay as though he had never left his old classification.

Ryan had been discriminated against because the principal did not like him personally. The grievance requested that Ryan be transferred back to School #2.

On June 8, 1983, the Board's Secretary-School Business Administrator denied the grievance. He asserted that the Board acted within its contractual right under Article VI to transfer employees and further observed that Ryan had suffered no loss in salary, title, or seniority.

The Association then demanded binding arbitration. The instant petition ensued.^{2/}

In its brief, the Board contends that it has a non-arbitrable, managerial prerogative to transfer employees involuntarily. It relies upon Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) ("Ridgefield Park") and Local 195, IFPTE v. State, 88 N.J. 393 (1982) ("Local 195").

Local No. 866 asserts that Ryan was transferred because of his pro-union activity and his personal problems with his supervisor. Local No. 866's brief further asserts that Article XIX's procedures concerning lateral transfers are negotiable.

In its reply brief, the Board asserts that the dispute predominantly involves its right to make substantive transfer decisions, that the contentions concerning alleged anti-union retaliation and procedural violations are not mentioned in the grievances, and that a claim of a discriminatory transfer is not arbitrable and must be treated through unfair practice proceedings. See Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) ("Teaneck").


^{2/} The parties have agreed to adjourn any arbitration proceedings pending this decision.

We agree with the Board that, under all the circumstances of this case, the grievance may not be submitted to binding arbitration. Under Ridgefield Park and Local 195, the Board has a non-arbitrable managerial prerogative to transfer employees based on its assessment of the employee's qualifications and abilities to do the work it needs done. Here, the employee is essentially seeking to rescind the Board's substantive transfer decision.^{3/} Further, under Teaneck, Local No. 866 must pursue any claim that anti-union discrimination motivated the transfer by filing an unfair practice charge.

ORDER

The request of the Elizabeth Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin and Wenzler voted in favor of this decision. Commissioners Graves and Hipp were opposed to the decision. Commissioner Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey

June 25, 1984

ISSUED: June 26, 1984

^{3/} The Commission cannot be bound by the labels contesting parties place on a dispute in their briefs. Instead, the Commission must examine all available documents to ascertain the true nature of the grievance before it. In re South River Bd. of Ed., P.E.R.C. No. 83-135, 9 NJPER 274 (¶14126 1983). Having reviewed these documents, we perceive no real issue concerning whether the Board followed the proper procedures in making this involuntary transfer. It is clear that Local No. 866 is trying to rescind Ryan's involuntary transfer, not to protect the right of other employees to apply for voluntary lateral transfers to vacant positions. Moreover, under the facts of this case, this transfer cannot be called disciplinary in nature. In re Cape May County Bridge Commission, P.E.R.C. No. 84-133, 10 NJPER ___ (¶ ___ 1984).