

P.E.R.C. NO. 84-134

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLAINFIELD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-25

PLAINFIELD ASSOCIATION OF
SCHOOL ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance that the Plainfield Association of School Administrators had filed against the Plainfield Board of Education. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it allegedly failed to evaluate the high school's guidance counselor supervisor three times one year and failed to consult with him before transferring him back to the position of guidance counselor.

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Appearances:

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

For the Respondent, Wayne J. Oppito, Esquire

DECISION AND ORDER

On December 8, 1983, the Plainfield 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 the Plainfield Association of School Administrators ("Association") has filed. The grievance alleges that the manner in which the Board reassigned Warren Henry from supervisor of guidance to guidance counselor violated certain provisions of the parties' collective negotiations agreement.

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

The Association is the majority representative of the Board's school administrators. The Board and the Association have entered a collective negotiations agreement effective between July 1, 1981 and June 30, 1984. That agreement contains

the following relevant provisions. Section A of Article VII, entitled Administrator Evaluation, provides in part: "A non-tenure administrator shall be evaluated at least three (3) times a year." Sections A and B of Article XV, entitled Administrative Relationships, provides:

- A. Past practices of the Board affecting the rights to which administrators have been entitled, whether written or oral, cannot be changed without prior consultation with the Association.
- B. No member of the bargaining unit shall be transferred from his present position or assignment without prior consultation. 1/

In September 1981, the Board assigned Warren Henry, then a non-tenured guidance counselor working ten months a year at Plainfield High School, to the position of guidance department supervisor, a 12 month position. He occupied that position during the 1981-82 and 1982-83 school years. In April 1983, however, the Board notified him that he would not receive a contract for that position for the following school year and instead would be reassigned to his former ten month position as guidance counselor. During the 1983-84 school year, Henry worked as a non-tenured guidance counselor.

The Association then filed a grievance. It alleged, in part, that:

A non-tenured PASA Administrator was not given three (3) evaluations in accordance with the PASA contract Article VII, Section A.

1/ The parties' contract does not appear to contain a negotiated grievance procedure, but the Board's petition certifies that one exists.

A PASA Administrator was transferred from Supervisor of Guidance (12 months) to Guidance Counselor (10 months) without prior consultation as per Article XV, Section A and B of the PASA contract.^{2/}

The Association sought strict adherence to the agreement's provisions; reinstatement of Henry to the 12 month position of Supervisor of Guidance; and effective administrative support for the guidance department.

On June 21, 1983, the Assistant Superintendent, the Board's representative at that stage of the grievance proceedings, responded to the grievance. He found that Henry received only two evaluations instead of the contractually required three evaluations and that the spirit of Sections A and B of Article XV had been violated.^{3/} While he concurred that the Association should receive the relief it requested, the Assistant Superintendent stated that only the Board had the authority to determine whether Henry should be reinstated.

The Board subsequently refused to reinstate Henry. It alleges in its petition, however, that it granted him all other relief the Association requested and the Assistant Superintendent recommended.

On September 22, 1983, the Association demanded binding arbitration. The demand asserts that the Board violated the contractual provisions quoted and discussed above.^{4/} The instant

^{2/} The grievance also alleged that Henry did not receive the support necessary to perform his functions properly or sufficient time and assistance to improve his performance before receiving notice of his new assignment.

^{3/} He also agreed with the grievance's allegations set forth in the previous footnote.

^{4/} Given the limited nature of the demand, the remaining allegations of the grievance, as discussed in the two previous footnotes, are not in issue for purposes of this petition.

petition ensued.^{5/}

The Board asserts that the only issue before the arbitrator is whether Henry should be reinstated and that reinstatement as a remedy for the alleged contractual violations is not mandatorily negotiable.

The Association asserts that it is not seeking Henry's reinstatement. Instead, it only seeks an award requiring the Board to adhere strictly to Article VII, Section A and Article XV, Sections A and B and to cease and desist from violating these provisions. It asserts that the Board has not formally admitted to violating these provisions.

In a scope of negotiations proceeding, the Commission addresses only the abstract issue of whether the subject matter in dispute is within the scope of negotiations. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). In the instant case, the subject matter in dispute involves the application of Article VII, Section A and Article XV, Sections A and B to Henry's situation. The Association has further limited the dispute by conceding that it is not seeking reinstatement and is only seeking a cease and desist order.^{6/}

^{5/} The parties have agreed to stay arbitration pending this decision.

^{6/} The Commission's scope of negotiations jurisdiction does not encompass the question of whether the Board's alleged granting of all other relief besides reinstatement is a defense to arbitration.

Under these circumstances, and given the limited nature of the dispute, it is well settled that the dispute involves mandatorily negotiable matters which may be submitted to binding arbitration. The Board's alleged failure to evaluate Henry three times under Article VII, Section A raises a mandatorily negotiable issue of evaluation procedures, In re Brookdale Community College, P.E.R.C. No. 84-84, 10 NJPER 111 (¶15058 1984); In re Edison Township Bd. of Ed., P.E.R.C. No. 83-40, 8 NJPER 599 (¶13281 1982), while the Board's alleged failure to consult with Henry under Article XV, Sections A and B before his reassignment raises a mandatorily negotiable issue of transfer procedures. In re Local 195, IFPTE v. State, 88 N.J. 393 (1982); In re South River Board of Education, P.E.R.C. No. 83-135, 9 NJPER 274 (¶14126 1983), aff'd App. Div. No. A-4669-82T2 (2/29/84).

ORDER

The request of the Plainfield Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hipp, Wenzler, Suskin, and Butch voted for this decision. None opposed. Commissioner Newbaker abstained.

DATED: Trenton, New Jersey

May 30, 1984

ISSUED: June 1, 1984