

P.E.R.C. NO. 88-148

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-28

WASHINGTON TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Washington Township Education Association against the Washington Township Board of Education. The grievance alleges that the Board violated its collective negotiations agreement when it did not renew Skip Given's contract as head basketball coach. The Commission finds that extracurricular appointments are not arbitrable.

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A.
(Alan R. Schmoll, of counsel)

For the Respondent, New Jersey Education Association
(Eugene J. Sharp, UniServ Representative)

DECISION AND ORDER

On November 4, 1987, the Washington Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Washington Township Education Association ("Association") has filed. The grievance alleges that the Board violated its collective negotiations agreement when it did not renew Skip Given's contract as head basketball coach.

The parties have filed briefs and documents.^{1/} These facts appear.

^{1/} We asked the Association to show good cause for filing a late brief. It responded that the grievant's death had led to settlement discussions which broke down and that the Board did not object to the late filing. We accept the brief.

The Association is the majority representative of the Board's professionally certificated personnel. The Board and the Association entered a collective negotiations agreement effective July 1, 1985 to June 30, 1988. Article IV, Section D provides: "No teacher shall be disciplined without just cause in areas not ruled non-negotiable." The contract's grievance procedure ends in binding arbitration.

For ten years, Skip Given was head coach of the boys' varsity basketball team at the high school. During the 1981-82 school year, the Board investigated the complaints of parents of students Given coached, but reappointed him for the next year provided that he temper discipline with consideration of a player's needs; make sure his demanding practices not hurt his players' health or academics; strike a balance between winning and his players enjoying the game, and meet certain other conditions.

After the 1986-87 basketball season, Given's athletic director gave him top evaluation ratings. The athletic director, the high school principal and the superintendent recommended that Given be reappointed.

On June 23, 1987, the Board decided not to renew Given as basketball coach. It alleges it did so because past problems had resurfaced. The Association alleges it did so because a parent complained. The Board gave its reasons to Given and held a

hearing.^{2/} On August 5, 1987, the Board notified Given of his non-renewal.

On August 24, 1987, the Association filed a grievance claiming a violation of Article IV, Section D and certain other contractual provisions on procedures for handling complaints and evaluations. The Board denied this grievance and the Association demanded binding arbitration. The demand describes the dispute as Given's termination and seeks back pay. This petition ensued.

The Board argues that this dispute predominantly challenges its non-negotiable right to make extracurricular appointments. The Association responds that Given's non-reappointment was a disciplinary determination which may be submitted to binding arbitration under N.J.S.A. 34:13A-5.3 because Given does not have an alternate statutory appeal procedure.

Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) and In re Wayne Tp., 220 N.J. Super. 340 (App. Div. 1987), compel us to restrain arbitration. In Teaneck, we recognized the general rule that appointments are non-negotiable, but found an exception for a claim that a teacher had been denied an appointment as an assistant basketball coach because of race discrimination. The Supreme Court reversed and ruled out any exceptions, stating:

^{2/} The Association alleges this proceeding was not a real hearing and that Given did not have a chance to challenge the Board's case or make his own.

[A]dding a discrimination claim does not change the reality that the arbitrator would be reviewing the managerial decision and the agency's exercise of its functional right -- not to discriminate -- but to choose among qualified candidates. [Id. at 17]

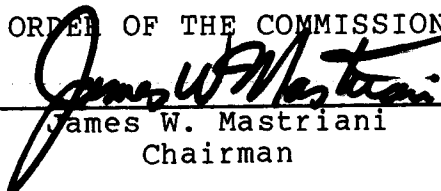
In Wayne, a deputy township clerk served three four-year terms, but was not reappointed for another term, allegedly because of political discrimination. We found that this non-reappointment was arbitrable as an alleged disciplinary discharge, but the Appellate Division read Teaneck to require reversal.

The Board decided not to renew Given's coaching contract. Under Teaneck and Wayne, whether this decision was justified cannot be submitted to an arbitrator. We will accordingly restrain arbitration over that decision.^{3/}

ORDER

The Board's request for a restraint of binding arbitration over its decision not to reappoint Skip Given as head basketball coach is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey

June 23, 1988

ISSUED: June 24, 1988

^{3/} The grievance also cites contractual clauses on evaluation and complaint procedures. The briefs do not indicate what procedural issues may exist. We hold only that the just cause issue may not be submitted to binding arbitration.