

P.E.R.C. NO. 81-144

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PENNS GROVE-CARNEYS POINT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-62

PENNS GROVE-CARNEYS POINT
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines in a grievance arbitration context, that the matter in dispute relates to appointment of teachers to extracurricular positions rather than employee discipline pursuant to a "just cause" standard. After the Board refused to reappoint a teacher to an extracurricular position which he had held before, the Association grieved this matter as relating to a disciplinary action without just cause. Although the Commission has found that the subject of employee discipline pursuant to a "just cause" standard to be a term and condition of employment, the subject of assignment of teachers to extracurricular positions is a matter involving educational goals and policies and is a non-negotiable, non-arbitrable managerial prerogative. Accordingly, the Commission concludes that the instant matter may not proceed to arbitration.

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Appearances:

For the Petitioner, Cassetta, Brandon Associates
(Daniel J. Brandon, Consultant)

For the Respondent, Selikoff & Cohen, P.A.
(Steven R. Cohen, of Counsel)

DECISION AND ORDER

On January 28, 1981, the Penns Grove-Carneys Point Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Penns Grove-Carneys Point Education Association (the "Association") are within the scope of negotiations. Additionally, the Board applied for an order seeking interim relief during the pendency of the scope of negotiations proceeding. On March 20, 1981, a Hearing Examiner for the Commission denied the Board's motion for interim relief. Briefs have been submitted by both parties.

The dispute herein centers around the negotiability/ arbitrability of a grievance filed by the Association challenging

the Board's refusal to reappoint C.E. Battersby, a teacher in the Penns Grove-Carneys Point Regional School District, to the position of Student Congress Advisor for the 1980-81 school year.

In its submissions the Association alleges that the Board's failure to reappoint Battersby to his extracurricular position was a disciplinary action initiated without just cause^{1/} and cites Article 4(D) of the parties' collective agreement which reads in part:

"The Board reserves to itself sole jurisdiction and authority over matters of policy and retains the right, subject only to the limitations imposed by the language of this agreement, in accordance with applicable laws and regulations."

...(2) To hire, promote, transfer, assign, and retain employees in positions in the school district, and for just cause, to suspend, to demote, discharge, or take other disciplinary action against employees." (emphasis supplied)

The Association asserts that the predominant issue herein is the subject of employee discipline pursuant to a "just cause" standard and that the Commission has recognized this subject to be a term and condition of employment.^{2/}

The Board seeks to restrain this grievance, asserting that the predominant issue involves its appointment of teachers to extracurricular positions. The Board seeks Commission support for its position that the issue is a matter of educational policy

^{1/} In support of its claim, the Association presented a letter written to Battersby by the Superintendent of School which stated the Superintendent's belief that the reason why he was not appointed was because of problems that he had had with a parent of one of the students. It is very questionable, assuming this incident was the motive, that this constitutes discipline rather than an educational policy judgment that the best interests of the program required that a different teacher be assigned.

^{2/} In re Lower Twp. Bd. of Ed., P.E.R.C. No. 81-99, 7 NJPER ____ (¶ 1981). See also, In re Haddonfield Board of Education, P.E.R.C. No. 81-63, 6 NJPER 558 (¶11283 1980).

We note that the grievance filed by the Association seeks Battersby's reinstatement to the extracurricular position and payment retroactive to September 1980. While the Association alleges that the Board's failure to reappoint Battersby was a disciplinary action, the Commission finds that the predominant issue in dispute involves the Board's failure to reappoint the grievant to his previous position as a Student Congress Advisor.^{3/} The Commission has previously found the subject of assignment to extracurricular positions to be a matter outside the scope of negotiations in Northvale Board of Education v. Northvale Teachers Ass'n, 6 NJPER 13 (¶11007 1979), aff'd App. Div. Docket No. A-1590-79. In Northvale it was stated that:

...the Association is seeking a determination...that the assignment of extracurricular duties is mandatorily negotiable and disputes concerning same are arbitrable, whenever it is alleged that the assignments are not equitably distributed. This does not affect our conclusion that such assignments are not themselves mandatorily negotiable. We have consistently determined that boards of education have the unfettered right to assign teachers to extracurricular activities....
Northvale at 11007.

The selection of teachers is predominantly a matter involving educational goals and educational policies and is not a matter upon which the mandatory duty to negotiate arises. In reaching this determination that the instant grievance relates to a non-negotiable managerial prerogative, we do not find this conclusion inconsistent with prior Commission decisions which had found the subject of employee discipline pursuant to a "just cause" standard to be a term and condition of employment.

^{3/} Woodstown-Pilesgrove Board of Education v. Woodstown-Pilesgrove Regional Education Ass'n, 81 N.J. 582 (1980).


The assertion that a grievance involves "just cause" is an insufficient basis to seek arbitration in which the essence of the dispute involves a non-negotiable and non-arbitrable managerial prerogative.

In view of the above, we hold that the grievance relates to a non-negotiable managerial prerogative and should not have been submitted to arbitration.

ORDER

The Board's request for a permanent restraint of arbitration is granted with respect to the failure to reassign C. E. Battersby in the position of Student Congress Advisor.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981