

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PENNSVILLE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-21

PENNSVILLE ASSOCIATION OF
NON-CERTIFIED PERSONNEL,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Public Employment Relations Commission restrains binding arbitration of a grievance which the Pennsville Association of Non-Certified Personnel ("Association") had filed against the Pennsville Township Board of Education ("Board"). The grievance had alleged that the Board violated the parties' contract when it declined to use seniority as the governing factor in determining transfers of custodians.

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Appearances:

For the Petitioner, Jordan and Jordan, Esqs.
(John D. Jordan, of Counsel)

For the Respondent, Charles Peraset, Consultant
New Jersey Education Association

DECISION AND ORDER

On November 23, 1981, the Pennsville Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The instant dispute arose with respect to a grievance which the Pennsville Association of Non-Certified Personnel ("Association") seeks to submit to binding arbitration. The Board contends that the subject matter of the grievance is not arbitrable.

The facts are not complicated. The grievant was one of two custodians assigned to Pennsville Memorial High School during the 7:00 a.m. to 3:00 p.m. shift. Due to budget cut-backs, one of the 7:00 a.m. to 3:00 p.m. positions was eliminated commencing with the 1981-82 school year. The Board retained the chief custodian in the remaining 7:00 a.m. to 3:00 p.m. position and transferred the grievant to the 3:00 p.m. to 11:00 p.m. shift at

the same school. The Board determined that a transfer within the same school was necessary to insure a more workable, efficient operation. The grievant apparently preferred to work the day shift at a different school. The parties disagree over whether the Board in the past has allowed employees to use seniority to choose a place of transfer.

On October 26, 1971, the Association filed its demand for arbitration. The demand states:

The Association contends that the Board has violated Article 2, A-1 of the Agreement in that [it] arbitrarily applied an established policy with respect to the grievant.

The grievant has been denied equal treatment in the exercise of seniority rights, ^{1/}previously granted to the members of the unit.

The Board responded with the instant petition. Both parties filed initial briefs; the Board also filed a reply.

In its brief, the Association states while it does not challenge the Board's managerial right to transfer, it does challenge the allegedly arbitrary and capricious nature of the grievant's transfer. In particular, the brief alleges that "on several prior occasions where job elimination occurred [both within

1/ Article 2A.1 defines the word "grievance" as including a complaint that the Board violated or inequitably applied a policy affecting a unit member. The demand does not cite any other contract provisions. Article 7, however, entitled Vacancies and Transfers, provides, in pertinent part:

- B. All association member requests for transfer shall be in a written request and if the request is granted or denied, said member shall receive a written notification of the decision.
- C. The Board of Education shall have the authority to transfer employees, wherever in the opinion of the Board, after careful study and consideration, such transfer would insure a more workable, efficient school district operation, and only after the procedure prescribed in Article 9-E [pertaining to tenure and evaluations] has been followed.

and outside the unit] said individuals filling the eliminated positions were conferenced and given an opportunity to choose their new work station on the basis of years of service in the district (seniority)." (P.2)

In its briefs, the Board relies on Ridgefield Park Ed. Assn'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) ("Ridgefield Park"), a case holding that the criteria governing teacher transfers are an illegal topic of negotiations. The Board also cites In re East Brunswick Bd. of Ed., P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981) ("East Brunswick"), a case in which we held non-negotiable a proposal mandating that seniority governs teacher transfers. See also In re Freehold Reg. High School Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980).^{2/}

The Board correctly cited Ridgefield Park for the proposition that teacher transfers are managerial prerogatives beyond the scope of negotiations. The instant case involves a janitor instead of a teacher. However, the Commission's Chairman, in In re Deptford Twp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (¶11014 1980), found no basis to distinguish transfer decisions affecting professional employees from those affecting non-professionals. Accordingly, the Chairman determined that managerial decisions to

^{2/} The Board also argues that the grievant may not go to arbitration since he has not complied with Article 2C6 of the agreement. This provision allegedly requires a grievant to waive any right to submit the dispute to any other administrative or judicial forum before he can go to arbitration. Under In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55,57 (1975), we will not consider the alleged contractual defense. Such a question is for the arbitrator or the courts.

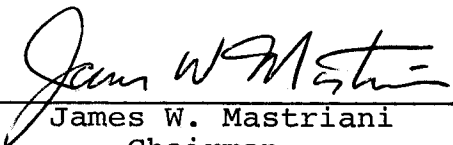
transfer janitorial employees are non-negotiable. After granting a motion for reconsideration, the Commission affirmed this decision. P.E.R.C. No. 80-108, 6 NJPER 110 (¶11057 1980).

While transfer decisions are not negotiable, procedural aspects of transfers -- such as notice and opportunity to be heard -- are mandatorily negotiable. In re Jersey City Bd. of Ed., P.E.R.C. No. 81-52, 7 NJPER 682 (¶12308 1981). The instant dispute, however, involves a challenge to the decision to order a particular transfer, not the procedures used to reach that decision. The grievant would have the arbitrator rule that employees have the right to choose where they will be transferred based on seniority. Such a ruling would displace altogether the Board's managerial right to make transfer decisions. Ridgefield Park and East Brunswick preclude this result. Accordingly, we will restrain arbitration of this dispute.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that arbitration over the Association's grievance is restrained.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioners Graves and Hartnett were not present.

DATED: Trenton, New Jersey
February 9, 1982
ISSUED: February 10, 1982