

P.E.R.C. NO. 93-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-10

CINNAMINSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Cinnaminson Education Association against the Cinnaminson Township Board of Education. The grievance contests the non-retention of a basketball coach. The Board's principal argument is that N.J.S.A. 34:13A-23 is unconstitutional. The Commission does not have jurisdiction to resolve such an argument. That is the province of the courts.

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Appearances:

For the Petitioner, Cassetta, Taylor and Whalen,
consultants (Bruce Taylor, consultant)

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

DECISION AND ORDER

On August 5, 1992, the Cinnaminson Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a dispute with the Cinnaminson Education Association over the non-retention of a basketball coach.

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

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1991 to June 30, 1993. The agreement's grievance procedure ends in binding arbitration.

On August 13, 1991, the Board appointed Greg Ogden as varsity basketball coach for the 1991-1992 season. The incumbent coach, Len Carmichael, was not retained. On September 12, 1991, the Association filed a grievance alleging that Carmichael's non-retention violated the agreement because it lacked just cause. The grievance was denied and the Association demanded arbitration. This petition ensued.

Before 1990, extracurricular appointments and retentions were not mandatorily negotiable or legally arbitrable. Teaneck Teachers Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981). But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

Since this amendment expressly permits an employer to agree to arbitrate disputes over the non-retention of an employee in an

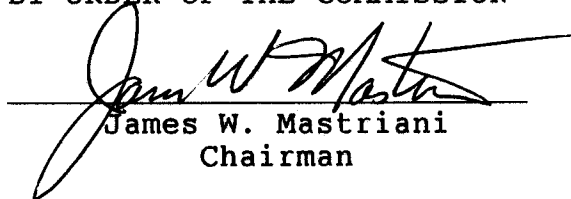
extracurricular position, we find this grievance concerns a mandatorily negotiable issue and is lawfully arbitrable.^{1/} See Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991).

The Board's principal argument is that the statute is unconstitutional. We do not have jurisdiction to resolve such an argument. That is the province of the courts. Boonton Bd. of Ed. v. Kramer, 99 N.J. 523, 532 (1985).

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993
Trenton, New Jersey
ISSUED: January 29, 1993

^{1/} We express no opinion on whether the non-retention was disciplinary or without just cause, or whether the parties' contract affords any rights regarding retention in extracurricular assignments. These issues are all within the jurisdiction of the arbitrator or the courts. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).