

P.E.R.C. NO. 87-162

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOMS RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-19

TOMS RIVER EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Toms River Education Association against the Toms River Board of Education. The grievance alleges that the Board violated a collective negotiations agreement by failing to consider the application of a teaching staff member for the position of learning disability teaching consultant. The Commission finds that the grievance concerns only promotional procedures and not the Board's managerial prerogative to determine the criteria for promotion.

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Appearances:

For the Petitioner, Metzler Associates
(James L. Rigassio)

For the Respondent, Starkey, Kelly, Blaney & White, Esqs.
(James M. Blaney, of counsel)

DECISION AND ORDER

On October 20, 1986 the Toms River Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The petition seeks to restrain arbitration of a grievance which the Toms River Education Association ("Association") has filed against it. The grievance alleges that the Board violated a collective negotiations agreement by failing to consider the application of a teaching staff member for the position of learning disability teaching consultant.

On January 13, 1987, Edmund G. Gerber, the Commission's named designee, denied the Board's application for a temporary restraint of arbitration. I.R. No. 87-13, 13 NJPER 163 (¶18072 1987). He found that Article XIII.A.1, providing that applications

for promotional vacancies will be kept on file for one year, was a mandatorily negotiable promotional procedure.

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

The Board and the Association have entered a collective negotiations agreement effective from July 1, 1985 through June 30, 1988. Its grievance procedure ends in binding arbitration.

Walter Donovan, a member of the teaching staff of the Toms River School System, applied for the position of learning disability teaching consultant on September 4, 1985. An opening in this position occurred within one year. When an inquiry was made as to why Donovan was not hired, he was informed that the reason he did not get the position was because he did not apply. The Association filed a grievance and demanded binding arbitration. The instant petition ensued.

We deny the request for a restraint of arbitration essentially for the reasons stated in I.R. No. 87-13. The grievance concerns only promotional procedures and not the Board's managerial prerogative to determine the criteria for promotion. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Jersey City Ed. Ass'n, Inc. v. Jersey City Bd. of Ed., ___ N.J. Super. ___ 95/27/87).^{2/}

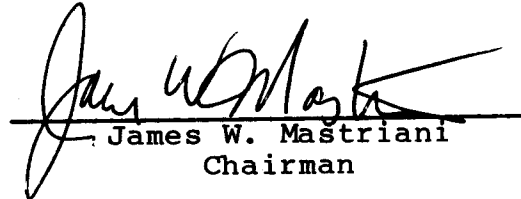
^{1/} All briefs and documents were filed before the designee's decision.

^{2/} We do not speculate about what relief would be appropriate if a contractual violation is found.

ORDER

The Board's request for a restraint of binding arbitration is denied.

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 17, 1987
ISSUED: June 18, 1987