

P.E.R.C. NO. 89-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-77

HACKENSACK CUSTODIAL AND
MAINTENANCE ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Hackensack Custodial and Maintenance Association against the Hackensack Board of Education. The grievance contests a custodian's discharge. The Commission finds that N.J.S.A. 34:13A-5.3 permits binding arbitration of employee discipline, including discharge, unless the employee has an "alternate statutory appeal procedure" to contest the employer's action. It further finds that this employee does not appear to have tenure and accordingly has no right to a tenure hearing under N.J.S.A. 18A:6-10.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin, Tischman,
Epstein & Gross, Esqs.
(Barbara Barbash Kalish, of counsel)

For the Respondent, Bucceri and Pincus, Esqs. (Gregory T. Syrek,
of counsel)

DECISION AND ORDER

On May 25, 1988, the Hackensack Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain binding arbitration of a grievance filed by the Hackensack Custodial and Maintenance Association ("Association"). The grievance contests a custodian's discharge.

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

The Association represents the Board's custodial and maintenance employees. The Board and Association are parties to a collective negotiations agreement effective from July 1, 1986 to June 30, 1989. Its grievance procedure ends in binding arbitration. Article 17 grants tenure to custodial and maintenance

employees after three consecutive years of full-time employment and thereafter bars their dismissal, suspension or reduction in compensation except for neglect, misbehavior or "other offense."

Article 4 provides:

Whenever an employee is required to appear before any administrator or supervisor, Board or any committee or member thereof, concerning a matter which shall result in a written report, which shall be placed in his or her personnel file and/or which would adversely affect the continuation of that employee in his or her position, employment or salary or any increments pertaining thereto, then he or she shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a representative of the Association present to advise him during such meeting or interview. The annual evaluation conference shall be excluded from this provision.

No employee shall be reduced in rank or compensation or otherwise deprived of any benefit under the terms of this contract without cause.

Effective November 30, 1987 the Board dismissed Wayman Smith, a custodian. Smith had worked full-time in 1985-1986 and 1986-1987 and had been issued a contract for 1987-1988. The Association filed a grievance contending that the Board violated Article 4 by not notifying Smith in writing of the reasons for the discharge or giving him an opportunity to prepare a defense or have a timely hearing before the Board. The Board denied the grievance, contending that it had notified Smith that poor attendance was the reason for his discharge and had complied with all applicable procedures. On February 4, 1988 the Association demanded arbitration. This petition ensued.

The Board argues that because Smith was "tenure-eligible" pursuant to Article 17, he has an alternate statutory appeal procedure barring arbitration of his discharge. The Association claims that no alternate statutory appeal procedure exists and therefore the grievance is arbitrable.

The boundaries of our scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975) stated:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [78 N.J. at 154; emphasis added].

Accordingly, we do not determine whether the Board had valid grounds for the discharge or whether it complied with any attendant procedures.


N.J.S.A. 34:13A-5.3 permits binding arbitration of employee discipline, including discharge, unless the employee has an "alternate statutory appeal procedure" to contest the employer's action. In CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984), certif. den. 99 N.J. 169 (1984), the Appellate Division affirmed Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9 NJPER 356 (¶14158

1983) holding that mid-year disciplinary discharges of non-tenured custodians are arbitrable. See also Essex Cty. College, P.E.R.C. 88-63, 14 NJPER 123 (¶19046 1988) (mid-contract discharge of a non-tenured employee arbitrable); Plainfield Bd. of Ed., P.E.R.C. No. 86-108, 12 NJPER 351 (¶17131 1986) (mid-year suspension of custodian arbitrable). Cf. Hudson Cty., P.E.R.C. No. 85-33, 10 NJPER 563 (¶15263 1984) (discharge of provisional civil service employee arbitrable). It does not appear to us that this employee is tenured since he has not yet worked for three full years. Accordingly, he has no right to a tenure hearing under N.J.S.A. 18A:6-10. Further, the grievance also appears to allege violations of negotiated disciplinary review procedures which are mandatorily negotiable and not preempted. The grievance is arbitrable.

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
November 22, 1988
ISSUED: November 23, 1988