

P.E.R.C. NO. 93-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOMS RIVER REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-70

OPEIU LOCAL 14, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by OPEIU Local 14 against the Toms River Regional School District Board of Education's. The grievance asserted that the Board violated the parties' collective negotiations agreement when it laid off a negotiations unit employee. The restraint is granted to the extent the grievance contests the Board's decision to eliminate the position of Intergenerational Program Coordinator.

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Appearances:

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

For the Respondent, Spear, Wilderman, Borish, Endy,
Browning and Spear (Samuel Spear and William Cummings, on
the brief)

DECISION AND ORDER

On February 10, 1993, the Toms River Regional School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by an employee represented by OPEIU Local 14, AFL-CIO. The grievance asserts that the Board violated the parties' collective negotiations agreement when it laid off a negotiations unit employee.

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

Local 14 represents the Board's educational support services supervisors and affiliated employees. The parties entered into a collective negotiations agreement effective from July 1, 1989 through June 30, 1992; that contract has been extended through June 30, 1994. The grievance procedure ends in binding arbitration.

During the 1991-1992 school year Maxine Haines held the position of Intergenerational Program Coordinator. Haines was non-tenured and the least senior employee in that position. On May 5, 1992, the Assistant Superintendent sent Haines a letter stating that her position had not been included in the budget for the next school year and that at its May 19, 1992 meeting, the Board would consider eliminating her position. The letter further stated that Haines had a right to be present at that meeting and to be represented by anyone she wanted. Haines attended the meeting without representation. The Board voted to eliminate her position.

On June 2, 1992, Haines filed a grievance. She asserted that the Board had violated a contractual provision (Article 5B) stating that there would be no reduction in the work force during the contract. She asked that her position be reinstated. She also asserted that the Superintendent had violated a contractual provision (Article 4C) by meeting with her without union representation.

After the grievance was denied, Local 14 demanded binding arbitration. It asserted that Haines had been improperly laid off and should be reinstated with back pay and benefits. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) states:

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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have.

A school board has a managerial prerogative to reduce the size of its workforce. In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979) (reduction in force of teachers); Manville Bd. of Ed., P.E.R.C. No. 92-82, 18 NJPER 98 (¶23044 1992) (reduction in force of teacher aides); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No. A-4429-85T6 (3/25/87), certif. den. 108 N.J. 665 (1987) (reduction in force of secretary); North Hunterdon Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 86-55, 11 NJPER 707 (¶16245 1985) (reduction in force of teacher aides). We will therefore restrain binding arbitration to the extent the grievance

contests the decision to eliminate the position of Intergenerational Program Coordinator held by Maxine Haines.^{1/}

We will not restrain arbitration to the extent the grievance asserts that the Superintendent violated a contractual provision by meeting with Haines without union representation. That procedural claim is severable from the decision to eliminate Haines' position.

ORDER

The request of the Toms River Regional School District Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the Board's decision to eliminate the position of Intergenerational Program Coordinator held by Maxine Haines.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration.

DATED: May 20, 1993
Trenton, New Jersey
ISSUED: May 21, 1993

^{1/} N.J.S.A. 18A:28-9 states that the tenure laws do not limit a school board's right to reduce the number of teaching staff members for reasons of economy. The parties dispute whether Haines was a teaching staff member under this statute, but that dispute is immaterial since the board had a prerogative to lay off Haines even if she wasn't a teaching staff member.