

P.E.R.C. NO. 95-63

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-21

LONG BRANCH FEDERATION OF TEACHERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Long Branch Federation of Teachers against the Long Branch Board of Education to the extent the grievance contests the Board's decisions to reduce its force and subcontract its operations. The Commission declines to restrain arbitration of the Federation's claims concerning notice and severance pay and other economic benefits.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-21

LONG BRANCH FEDERATION OF TEACHERS,

Respondent.

Appearances:

For the Petitioner, McOmber & McOmber, attorneys  
(J. Peter Sokol, of counsel)

For the Respondent, Szaferman, Lakind, Blumstein, Watter &  
Blader, attorneys (Sidney H. Lehmann, of counsel)

DECISION AND ORDER

On September 8, 1994, the Long Branch Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Long Branch Federation of Teachers. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reduced its workforce and subcontracted certain work without negotiating with the Federation or giving sufficient notice to employees who lost their jobs.

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

The Federation represents certain Board employees, including its paraprofessionals, cafeteria and playground aides, and bus aides and bus drivers. The parties entered into a collective

negotiations agreement effective from July 1, 1992 through June 30, 1995. Article IV is entitled Federation Rights. Section 5 provides:

The Board shall give written notification to the Federation of any proposed reductions in force affecting members of the bargaining unit.

The grievance procedure ends in binding arbitration of contractual disputes, but excludes any complaints arising out of a non-reappointment or a non-renewal of a non-tenured/non-permanent employee.

On April 26, 1994, the Board's superintendent wrote a letter to the Federation's president. The letter confirmed a conversation in which the president learned that the Board planned to meet on April 28 and "take action with respect to the elimination, and/or non-renewal of the following positions: 20 Bus Aides, 18 Cafeteria Aides, 7 Paraprofessionals, 4 Bus Drivers."

On April 28, the Board eliminated these positions. The employees holding them were terminated at the end of the 1993-1994 school year. The work performed by these employees was subcontracted.

The Federation filed a grievance. It asserted that the Board had arbitrarily denied these employees reemployment; had discriminated against them on the basis of their sex, race, age, and economic status; and had failed to negotiate over changing their employment conditions. The grievance cited the quoted contractual article as well as other articles prohibiting discrimination, requiring negotiations, and prohibiting contract modifications. The

grievance was amended to add an alleged violation of a contractual article prohibiting discrimination against Federation members.<sup>1/</sup> The Federation demanded that the Board either rehire the bus aides, cafeteria aides, and bus drivers or pay them for accumulated sick time, provide them with health insurance until December 31, 1994, and provide severance pay to employees unable to collect unemployment compensation.

A hearing was held and an employer designee denied the grievance. He found no evidence to support the grievance's allegations and concluded that the Board had satisfied its contractual duty to provide written notice of the proposed reduction in force. The superintendent and the Board agreed with this decision.

The Association demanded arbitration. It identified the matter to be arbitrated as "failure to notify and negotiate reduction in force." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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

---

<sup>1/</sup> The Federation has filed an unfair practice charge alleging that the Board acted discriminatorily and violated its duty to negotiate. That charge has been held in abeyance pending this decision.

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.

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

A school board has a prerogative to reduce its workforce or subcontract its operations. Old Bridge Tp. Bd. of Ed. v. Old Bridge Tp. Ed. Ass'n., 98 N.J. 523 (1985); Local 195, IFPTE v. State, 88 N.J. 393 (1982); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979). We accordingly restrain arbitration to the extent the grievance seeks to contest these decisions through binding arbitration. We also restrain arbitration of the various discrimination claims since those claims must be raised in the appropriate statutory forum. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983).

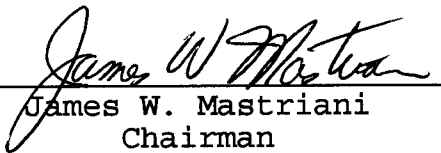
A school board may negotiate a clause requiring it to notify employees of a proposed reduction in force or subcontract. It may also agree to discuss such proposals with its employees' representative. Old Bridge; Local 195; Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984). And it may agree to provide severance pay to employees losing their jobs. Maywood; Pennsville Tp. Bd. of Ed., P.E.R.C. No. 84-21, 9 NJPER 586 (¶14246 1983). While the Board asserts that it has satisfied its duty to provide written notice, that assertion raises a contractual defense

outside our jurisdiction. We therefore decline to restrain arbitration of the Federation's claims concerning notice and severance pay and other economic benefits.

ORDER

The request of the Long Branch Board of Education for a restraint of binding arbitration is granted to the extent that the grievance contests the Board's decisions to reduce its force and subcontract its operations.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: February 28, 1995  
Trenton, New Jersey  
ISSUED: March 1, 1995