

P.E.R.C. NO. 92-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-41

LONG BRANCH SCHOOL EMPLOYEES
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Long Branch School Employees Association against the Long Branch Board of Education. The grievance contests a teacher's reassignment. The Commission finds that decisions to transfer and reassign teachers are not mandatorily negotiable and the facts do not indicate that the decision to reassign this teacher was disciplinary.

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Appearances:

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

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel)

DECISION AND ORDER

On October 9, 1991, 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 School Employees Association. The grievance contests a teacher's reassignment. The parties have filed exhibits and briefs. Neither party requested a hearing. These facts appear.

The Association represents the Board's teachers and other certified personnel. The parties entered into a collective negotiations agreement effective from July 1, 1989 through June 30, 1992. The grievance procedure ends in binding arbitration.

Edd Ray is a tenured teacher. His teaching certification has an endorsement in special education and he taught speech

education when he began work with the Board in 1973. In September 1977, he was reassigned to the position of an in-school suspension teacher in the middle school.

On March 15, 1991, a staff meeting was held. The superintendent, two assistant superintendents, the high school principal and others attended. They discussed the possibility that two high school teachers would have their contracts reduced by 2/5 because of insufficient enrollment in Industrial Art and Business classes. To avoid that reduction, it was agreed to give each of these teachers one-half of the responsibility for the in-school suspension program at the high school; transfer the teacher in charge of that program to Ray's position in the middle school, and reassign Ray to a special education position in the middle school. Ray's salary, benefits, work hours, and work site were not changed.

On March 20, 1991, the Board held a public meeting. Ray spoke about the need for an assistant girls' track coach, an extracurricular activity in which he is involved. After that meeting, the Superintendent reprimanded Ray for not going through the administrative structure before speaking. Ray grieved this reprimand and the Board withdrew the reprimand from his personnel file. Ray apparently withdrew a demand for a public apology.

On March 21, 1991, the decisions made at the March 15 meeting were recommended to the personnel committee. The personnel committee and the Board accepted these recommendations.

On September 20, 1991, the Association demanded arbitration. The demand identified the grievance to be arbitrated as "Letter of Reprimand/Reassignment." 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 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]

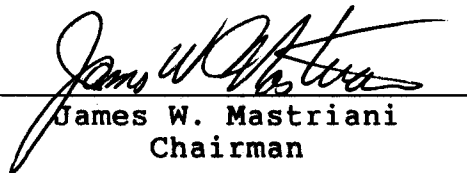
Thus, we cannot consider the merits of the grievance.

Decisions to transfer and reassign teachers are not mandatorily negotiable. Ridgefield Park; Local 195, IFPTE v. State, 88 N.J. 393 (1982). While a disciplinary transfer between work sites would be prohibited under N.J.S.A. 34:13A-27 and a disciplinary reassignment at the same work site would be arbitrable under the discipline amendment to N.J.S.A. 34:13A-5.3, Sea Girt Bd. of Ed., P.E.R.C. No. 91-75, 17 NJPER 158 (¶22065 1991), the facts do not indicate that the decision to reassign Ray was disciplinary. We accordingly will restrain binding arbitration over the decision to transfer Ray.

ORDER

The request of the Long Branch Board of Education for a restraint of binding arbitration over the decision to transfer Edd Ray is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: February 19, 1992
Trenton, New Jersey
ISSUED: February 20, 1992