P.E.R.C. NO. 94-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON CENTRAL REGIONAL
HIGH SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-24

HUNTERDON CENTRAL BUS DRIVERS
ASSOCIATION/NJEA/NEA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Hunterdon Central Bus Drivers Associaiton/NJEA/NEA against the Hunterdon Central High School Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it terminated a bus driver without just cause. The Commission finds that a school board may agree to extend contractual tenure to non-professional school board employees and to continue their employment absent just cause for termination or non-renewal.

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Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, John A. Thornton, Jr., NJEA Field Representative

DECISION AND ORDER

On September 14, 1993, the Hunterdon Central Regional High School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of arbitration of a grievance filed by the Hunterdon Central Bus Drivers Association/NJEA/NEA. The grievance asserts that the Board violated the parties' collective negotiations agreement when it terminated a bus driver without just cause.

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

The Association represents the Board's regular and stand-by bus drivers. The parties entered into a collective negotiations

agreement effective from July 1, 1990 until June 30, 1993. Article 11 is entitled Discipline or Dismissal. Sections 11.2, 11.3, and 11.4 provide:

> 11.2 Violations of Board policy, rules or regulations shall be cause for disciplinary action as outlined below when just cause exists. Employees shall have the right to dispute any charge or alleged violation and may appeal such action through the grievance procedure, provided under this Agreement. There shall be three (3) separate penalties applied when it is necessary to impose discipline on any of the employees of the Board.
>
> 11.2.1 Oral reprimand.
>
> 11.2.2 A written reprimand to be placed in the employee's personnel file to be applied in the case of minor offenses. The Board shall furnish the employee and the Association with a copy of the reprimand. The employee shall be required to sign the file copy for the sole purpose of acknowledging receipt of a copy.
>
> 11.2.3 Suspension from work (without pay) for periods varying from one (1) to fifteen (15) days, according to the gravity of the offense and the previous record of the employee concerned to be applied in cases of a first serious offense or continued or repeated minor ones.
>
> 11.2.4 Discharge.
>
> 11.2.5 The Board may bypass any step of this procedure.
>
> 11.3 If a bus driver is required to attend a meeting with the Board, Superintendent or a designated representative for the purpose of discipline, he/she will be so advised and may have an Association representative present during such a meeting.

> 11.4 In the event of termination of employment by the bus driver or by the Board, ten (10) working days notice shall be given except when the discharge is for cause.

The grievance procedure ends in binding arbitration.

The Board has employed Barbara McAloan since 1978. Her evaluations appear to have been satisfactory.

McAloan and the Board entered into an employment contract for the 1992-1993 school year. That contract stated that either party could terminate it at any time by giving the notice required by the collective negotiations agreement. The letter from the Director of Personnel advising McAloan of her reappointment also advised her that by contract she was not eligible for tenure.

On November 19, 1992, McAloan reported that bus #17 had brake and steering problems.

On February 18, 1993, her supervisor wrote a memorandum criticizing McAloan for an accident the day before. The supervisor believed that the accident was caused, in part, by McAloan's haste in running to her bus and leaving the parking lot. The supervisor noted that McAloan had been written up three times since 1985 for "driving too fast in the parking lot." The supervisor recommended that McAloan be suspended for 15 days without pay.

The Board accepted this recommendation. A letter from the Director of Personnel informed McAloan of her suspension and warned her that "[a]ny infractions for careless driving, speeding, or disregard for instructions will be considered grounds for dismissal."

On June 2, 1993, McAloan's supervisor reprimanded her for not following the proper procedures for reporting a problem with a bus and for walking out of the supervisor's office after the supervisor had suggested a way to alleviate McAloan's back problems. On June 9, the Superintendent suspended McAloan with pay until the Board's June 14th meeting. On June 14, the Board voted to terminate McAloan's employment effective June 30. No hearing was held before this action.

On June 22, 1993, the Association and McAloan filed a grievance contesting McAloan's termination. The grievance asserted that the termination violated the quoted sections of Article 11 and also invoked N.J.S.A. 34:13A-26. The grievance sought reinstatement, employment for the 1993-94 school year, and any other appropriate remedy.

The Board denied McAloan's request for reinstatement. The Association demanded binding arbitration, identifying the grievance as "[i]mproper termination without just cause." 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.

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

Under Wright v. City of East Orange Bd. of Ed., 99 N.J. 112 (1985), a school board may agree to extend contractual tenure to non-professional school board employees and to continue their employment absent just cause for termination or non-renewal. Wright's determination of the negotiability of job security for non-professional employees applied the three-part test for scope of negotiations determinations articulated in Local 195, IFPTE v. State, 88 N.J. 393, 404 (1982). First, a subject is negotiable only if it intimately and directly affects the work and welfare of public employees. Id. at 403. Second, an item is not negotiable if it has been preempted by statute or regulation. Id. Third, a topic that affects the work and welfare of public employees is negotiable only if it is a matter on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. Id. at 404.

The Court in Wright had little difficulty finding that tenure is an item that intimately and directly affects the work and welfare of public employees:

> [Tenure] protects employees from dismissal for "unfounded, flimsy or political reasons." Once the status of tenure is earned, it provides a measure of job security to those who continue to perform their jobs properly; and [n]othing more directly and intimately affects a worker than the fact of whether or not he has a job. [Id. at 118; citations omitted]

The Court then found that a tenure statute for custodians, N.J.S.A. 18A:17-3, did not preempt negotiations over tenure after three years. Finally, the Court stated that in determining what interference with governmental policy was significant, it has focused on the extent to which students and teachers are congruently involved. 99 N.J. at 121. Therefore, negotiation over tenure for custodians, or in this case for bus drivers, does not amount to significant interference.

We have thus repeatedly declined to restrain binding arbitration over bus driver terminations and non-renewals. Evesham Tp. Bd. of Ed., P.E.R.C. No. 92-63, 18 NJPER 46 (¶23019 1991); Ridgewood Bd. of Ed., P.E.R.C. No. 92-21, 17 NJPER 418 (¶22201 1991); Toms River Bd. of Ed., P.E.R.C. No. 89-114, 15 NJPER 281 (¶20123 1989); Eatontown Bd. of Ed., P.E.R.C. No. 89-101, 15 NJPER 261 (¶20109 1989); Eatontown Bd. of Ed., P.E.R.C. No. 88-144, 14 NJPER 466 (¶19195 1988). We therefore decline to restrain arbitration. We add that even if the substantive decision to terminate McAloan were not legally arbitrable, procedural issues, such as an alleged failure to hold a hearing, would be.

The Board asks us to reverse our long line of precedents involving job security for bus drivers or to limit these cases to their facts. We decline to do so. Given Wright, the discipline amendment to N.J.S.A. 34:13A-5.3, and the 1990 education amendments requiring binding arbitration of all forms of discipline except tenure charges and certain increment withholdings,[1/] there is no

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1/ N.J.S.A. 34:13A-22 to 29.

managerial prerogative to dismiss non-professional school employees without cause. Compare Woolley v. Hoffman-LaRoche, Inc., 99 N.J. 284, 300 (1985) (employees need assurances that their livelihood will not be arbitrarily destroyed). Teachers are different because their statutory tenure framework preempts negotiation of different tenure arrangements or arbitration of tenure disputes. Englewood Bd. of Ed., P.E.R.C. No. 92-78, 18 NJPER 88 (¶23040 1992).

The Board's reliance on dictum in Teaneck Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 9 (1983) is also misplaced. That case did not consider the discipline amendment and its dictum is inconsistent with later cases such as Wright that recognize the right to negotiate for protection against unjust dismissals. Wayne Tp. and AFSCME Council 52, 220 N.J. Super. 340 (App. Div. 1987) is distinguishable for similar reasons. Further, neither Teaneck nor Wayne involved non-professional school board employees.

The Board asserts that Wright is distinguishable because N.J.S.A. 18A:17-3 expressly permits a school board to establish indefinite terms of employment for custodians while no comparable statute confers such discretion on boards to confer job security on school bus drivers. But this distinction favors rather than negates the negotiability of job security for bus drivers. Since there are no mandatory tenure requirements and no mandatory appeal procedures, a school board is free to negotiate over how it will exercise its discretion under N.J.S.A. 18A:11-1 to regulate the "conduct and discharge of its employees." See Plumbers & Steamfitters v.

Woodbridge Tp. Bd. of Ed., 159 N.J. Super. 83 (App. Div. 1978) (board of education employees whose tenure is not provided for by the Legislature may negotiate for job security). Compare East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-83T6 (3/19/85), certif. den. 101 N.J. 280 (1985) (N.J.S.A. 18A:11-1 permits board to arbitrate increment withholding disputes involving non-professional employees).

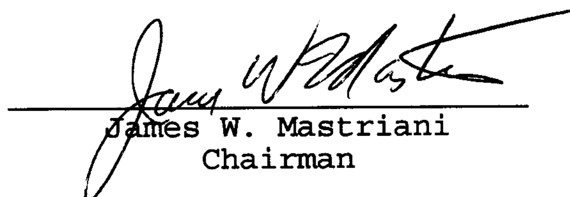
Whether or not the Board in this case agreed that bus drivers would have job security is a question we cannot consider. Ridgefield Park. That question is for the arbitrator as are all other contractual questions.

Finally, we reject the Board's argument that an arbitrator cannot order McAloan reinstated. Whether McAloan had a contractual right to continue in her job absent just cause and whether the Board violated that contractual commitment are determinations within the province of an arbitrator.

ORDER

The request of the Hunterdon Central Regional High School Board of Education for a restraint of binding arbitration is denied.

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: January 24, 1994
Trenton, New Jersey
ISSUED: January 25, 1994