

P.E.R.C. NO. 93-100

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-66

EDUCATION ASSOCIATION  
OF MORRIS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Education Association of Morris against the Morris School District Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it did not reappoint a teacher as sophomore class advisor. The Commission reaffirms that the non-retention of school employees in extracurricular positions is no longer beyond the scope of mandatory negotiations.

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Appearances:

For the Petitioner, Wiley, Malehorn and Sirota, attorneys  
(Daniel E. Goldman, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys  
(Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On February 1, 1993, the Morris 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 the Education Association of Morris. The grievance asserts that the Board violated the parties' collective negotiations agreement when it did not reappoint a teacher as sophomore class advisor.

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

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1989 through June 30, 1992. The grievance procedure provides, in part:

5. Except where grievance involves negotiated terms or conditions of employment forming part of this Collective Bargaining Agreement, and in regard to which all details are set forth in full herein, the written decision of the Morris Board shall in any event be final and binding on all concerned, and shall not be subject to the arbitration procedure set forth below where the grievance involves:

(f) Fulfillment of vacancies occurring in offices, positions, or employments with the Board.

D. If the grievance involves the interpretation and application of any term or condition of employment which has been negotiated and in regard to which all details are set forth in full in the Agreement (excluding, therefore, all items listed above as possible subjects for review by the Advisory Board of Administrative Procedures, as well as all policies not set forth in full above but adopted by reference), and provided the grievance does not involve any matter described in Section C above, if the aggrieved party is dissatisfied with the written determination of the Board, he may, within five days of receipt of such determination, request in writing that the Association's Executive Committee pursue an impartial settlement by arbitration. .

The Board offers 120 extra pay positions to its certificated staff each year. New applications must be submitted each year and applicants must be recommended by their supervisors.

Susan Cunfer is a tenured teacher who teaches at Morristown High School. During the 1990-91 and 1991-92 school years, she served in the extracurricular position of sophomore class advisor.

On June 23, 1992, Cunfer's supervisor evaluated her performance as sophomore class advisor. He rated Cunfer as "needs improvement" in six areas:

- . Cooperates with the Administrator of co-curricular activities in regard to submitting eligibility lists, fund raising applications, and program information as required.
- . Conducts himself/herself in a professional manner.
- . Develops respect by example in appearance, manners, behavior, language, and interest in the activity.
- . Displays ability to run and maintain a club or class officer meeting.
- . Works diligently on scheduling, is well organized and prepared for all meetings and events associated with the activity.
- . Keeps administrator of co-curricular activities informed about all events of the activity.

He also wrote that Cunfer did not "take an assertive approach to arrange class meetings which are essential to establishing the identity of the class." In particular, the first class meeting was not held until April, after she had been prompted to schedule a meeting by her supervisor. Under Recommendation, the supervisor wrote:

It is essential that class advisors be assertive in preparing class officers for leadership roles and initiate and implement regular class meetings during the school year to establish class identity. It is understood that motivating students is a challenge faced by every advisor. However, the role of the advisor is to challenge, excite and motivate students. It is not recommended that Ms. Cunfer be reappointed to the position of Sophomore Class advisor.

On July 14, 1992, the Association filed a grievance on Cunfer's behalf. The grievance asserted, in part, that the Board had violated a contractual clause prohibiting disciplinary action without good and just cause and requiring progressive discipline. The grievance sought the continuation of Cunfer's appointment as sophomore class advisor. The Board denied the grievance.

On December 30, 1992, the Association demanded binding arbitration. The demand stated that Cunfer had been denied a reassignment to an extracurricular position without just cause or progressive discipline. This petition ensued.

The Board asserts that its decision not to appoint Cunfer was not disciplinary under N.J.S.A. 34:13A-29(a)<sup>1/</sup> and that the grievance was not contractually arbitrable. The Association responds that all non-retentions in extracurricular positions are disciplinary under N.J.S.A. 34:13A-29(a) and that we do not have jurisdiction to determine whether a grievance is contractually arbitrable.

Our jurisdiction is narrow. Ridgefield Park. Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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<sup>1/</sup> N.J.S.A. 34:13A-29(a) provides:

The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L. 1968, c. 303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning the imposition of reprimands and discipline as that term is defined in this act.

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 cannot consider the grievance's contractual arbitrability or merits.

N.J.S.A. 34:13A-23 provides, in part:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations.

In Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991), we declined to restrain binding arbitration of a grievance challenging the non-retention of a coach. We stated:

We will not restrain binding arbitration unless the issue that the employee organization seeks to arbitrate is beyond the scope of mandatory negotiations. The non-retention of coaches is no longer such an issue....

Since this case does not involve the establishment of qualifications for the coaching positions, we have no basis to restrain arbitration. We express no opinion on whether the non-retention was disciplinary or without just cause; whether the parties' contract affords any rights regarding retention in or dismissal from extracurricular assignments; or whether the Association complied with the preliminary steps of the grievance procedure. These issues are all

within the jurisdiction of the arbitrator or the courts. Ridgefield Park.

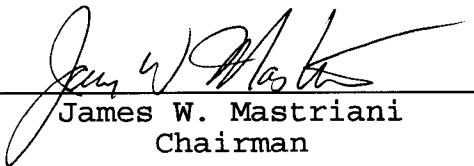
See also Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993).

The amendment and Holmdel control this case. The Board's assertion that non-retentions are not legally arbitrable unless they are first found to be disciplinary is without merit since N.J.S.A. 34:13A-23 requires negotiations over "all aspects" of retentions and does not distinguish between disciplinary non-retentions and other non-retentions. Contrast N.J.S.A. 34:13A-27 (only disciplinary increment withholdings may be submitted to binding arbitration). The remaining contractual issues are within the jurisdiction of the arbitrator.

ORDER

The request of the Morris School District Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: April 29, 1993  
Trenton, New Jersey  
ISSUED: April 30, 1993