

P.E.R.C. NO. 99-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-96

SOUTH AMBOY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the South Amboy Board of Education for a restraint of binding arbitration of a grievance filed by the South Amboy Education Association over the non-retention of a coach. The 1990 amendment to N.J.S.A. 34:13A-23 permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. The Commission finds that the amendment controls the legal negotiability of this dispute.

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.

P.E.R.C. NO. 99-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-96

SOUTH AMBOY EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Craig J. Coughlin, attorney,

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, on the brief)

DECISION

On July 11, 1998, the South Amboy Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the South Amboy Education Association over the non-retention of a coach.

The parties have filed briefs and documents. 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, 1996 to June 30, 1999. The agreement's grievance procedure ends in binding arbitration. Article III.B.6 excludes from arbitration "a complaint by any certified personnel occasioned by appointment to

or lack of appointment to, retention in any position for which tenure is not possible or not required."

Carol McDonnell is a certificated teacher who has served as an athletic coach. She was not appointed to any coaching position for the 1997-1998 school year.^{1/}

On September 10, 1997, the Association filed a grievance asserting that the decision not to appoint McDonnell to any vacant coaching position was made without just cause and was arbitrary and capricious. Responding to the grievance, the superintendent asserted, without elaboration, that changes in coaching positions had been made in the students' interests and were not arbitrary or capricious. On October 3, the Association advised the Board that it sought a hearing on its grievance. On December 8, the Association requested arbitration, asserting that the failure to appoint McDonnell to posted coaching vacancies "was arbitrary and capricious, disciplinary and without just cause." This petition ensued.^{2/}

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

^{1/} The parties have not identified either the coaching positions the grievant held during the 1996-1997 school year or the positions she sought. One of the responses to the grievance refers to McDonnell as an "incumbent advisor-coach."

^{2/} On January 8, 1998, the Association's grievance committee met with the Board. On February 9, the Board's attorney sent a memorandum to the Association. Citing Article III.B.6, he asserted that the Board was not obligated to respond to the grievance.

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.

We will not restrain binding arbitration unless the issue that the employee organization seeks to arbitrate is beyond the scope of negotiations. We lack jurisdiction to restrain arbitration based upon the Board's assertion that the class of grievances is not contractually arbitrable.

Until 1990, extracurricular appointments and retentions were neither mandatorily negotiable nor legally arbitrable. Teaneck Teachers Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981). But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

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. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

This amendment permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. We have thus held that disputes over non-renewals of coaches are legally arbitrable. See Union Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 98-98, 24 NJPER 119 (¶29060 1998); Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-29, 21 NJPER 391 (¶26240 1995); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Cinnaminson Bd. of Ed., P.E.R.C. No. 93-59, 19 NJPER 111 (¶24051 1993); Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991). The amendment controls the legal negotiability of this dispute.

ORDER

The request of the South Amboy Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, 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: September 24, 1998
Trenton, New Jersey
ISSUED: September 25, 1998