

P.E.R.C. NO. 2004-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MILLVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-50

MILLVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Millville Board of Education for a restraint of binding arbitration of a grievance filed by the Millville Education Association. The grievance contests the reassignments of two teachers for the 2002-2003 school year. The Commission concludes that reassignments and transfers are not generally mandatorily negotiable and that allegations that a managerial prerogative was exercised discriminatorily must be litigated through an unfair practice proceeding, not binding arbitration.

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.

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Appearances:

For the Petitioner, Capehart Scatchard, attorneys  
(Alan R. Schmoll, on the brief)

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

DECISION

On March 17, 2003, the Millville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Millville Education Association. The grievance contests the reassignments of two teachers for the 2002-2003 school year.

The parties have filed briefs and exhibits. The Association has filed the certifications of Bonnie Shropshire and Jill Fisler, the two teachers who were reassigned. These facts appear.

The Association represents teachers and support staff. The parties' collective negotiations agreement is effective from July

1, 2000 to June 30, 2003. The grievance procedure ends in binding arbitration.

On May 14, 2002, Shropshire and Fisler were notified that they would be assigned to teach language arts, instead of basic skills, for the 2002-2003 school year.

On May 17, 2002, the principal advised the assistant superintendent of personnel and assessment that nine transfers were being made in the best interests of the students. He stated that the curriculum delivery and classroom management issues are best served by these qualified and dedicated teaching professionals and that all transfers are within the designated certifications of the staff members.

On June 7, 2002, the Association filed a level 2 grievance on behalf of Fisler and Shropshire. The grievance alleges that the involuntary transfers were arbitrary, capricious and punitive.

On June 13, 2002, the principal denied the grievance as unfounded. He stated that he has a managerial right to transfer staff within their certifications and that the transfers were made in the best interest of the students.

On June 14, 2002, the Association moved the grievance to level 3, alleging that the manner in which the transfers were made contradicted the principal's response at level 2. It sought reversal of the transfers and requested that the principal be

directed to attend an upcoming workshop on "Leadership" and "Handling Conflict." The superintendent's denial of the grievance is not included in the record.

On August 5, 2002, the Board denied the grievance. It stated:

We support the Superintendent's recommendation in the matter of Mrs. Jill Fisler and Mrs. Bonnie Shropshire. We also believe that the grievance is unfounded and is denied, based on the premise that there has not been a violation of the contract.

Principals have the managerial right to transfer staff within the parameters of their certification. Therefore the contract citation 12:2.2 is not applicable. Transfers made at any of our schools are made in the best interest of the students and for no other reason.

On September 18, 2002, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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 do not consider the contractual merits of this dispute or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The Board argues that it has a managerial prerogative under Ridgefield Park to "deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." The Association responds that the teachers were transferred because they were building representatives for the Association and that the transfers thus violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (3).

Transfers and reassignments are not generally mandatorily negotiable. Ridgefield Park. The Association does not dispute that the Board generally has a managerial prerogative to reassign teachers, but contends that these reassignments were motivated by hostility toward Association activity. Such an allegation, however, may not be submitted to binding arbitration. In re Bridgewater Tp., 95 N.J. 235 (1984); Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); see also Mountainside Bd. of Ed., P.E.R.C. No. 94-25, 19 NJPER 536 (124251 1993).

ORDER

The request of the Millville Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners DiNardo, Katz, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

DATED: July 24, 2003  
Trenton, New Jersey  
ISSUED: July 25, 2003