

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-051

OLD BRIDGE TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Old Bridge Township Board of Education for a restraint of binding arbitration of a grievance filed by the Old Bridge Township Education Association. The grievance contests the denial of a teacher's transfer request. The Commission concludes that the Board has a managerial prerogative to decide whether to grant or deny a teacher's request for a transfer. The Associations' contention that the Board has exercised this prerogative arbitrarily and in possible violation of the Law Against Discrimination must be presented in another forum.

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, Sills, Cummis, Epstein & Gross,
P.C., attorneys (Phillip E. Stern, of counsel and on
the brief; Steven M. Fleischer, on the brief)

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

DECISION

On January 31, 2005, the Old Bridge Township Board of
Education petitioned for a scope of negotiations determination.
The Board seeks a restraint of binding arbitration of a grievance
filed by the Old Bridge Township Education Association. The
grievance contests the denial of a teacher's transfer request.

The parties have filed briefs and exhibits. These facts
appear.^{1/}

^{1/} On March 15, 2005, a Commission designee restrained
arbitration pending a final Commission decision. I.R. No.
2005-8, 31 NJPER 44 (¶21 2005).

The Association represents a negotiations unit including teachers. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration. Article XII is entitled voluntary transfers and reassignments. It allows teachers to submit a written request to the superintendent for a transfer to another school building.

Board policy 3125 addresses the employment of teaching staff members. A section of that policy labeled "Nepotism" provides:

1. When relatives or spouses are employed by the School District, neither the relative nor spouse shall have a direct supervisory or administrative relationship with the other following the adoption of this policy.

2. Whenever possible, relatives or spouses shall not be assigned to the same school plant. . . .

Anthony Iorlano is an industrial arts teacher assigned to the Carl Sandburg Middle School. Near the end of the 2003-2004 school year, he requested a transfer to a vacant position at the Jonas Salk Middle School.

On June 22, 2004, the Board denied his request. A letter from the Assistant Superintendent explained why:

While the Board expressed sympathy for your desire to transfer, they instructed me to refer to you to Board policy 3125. . . . They indicated that although individuals were grandfathered due to circumstances that existed prior to the passage of this policy, since the policy's adoption they have

attempted to be consistent in its application. Since there are two middle schools, it is "possible" to adhere to this policy.

That same day, the Association filed a grievance on Iorlano's behalf. It asserted: (1) the policy was applied in an arbitrary and capricious manner; (2) there have been 25 instances where the Board has allowed relatives to work in the same building since the policy was adopted; and (3) this is the first time the policy has been enforced. The grievance seeks to have the Board transfer Iorlano.

The Board denied the grievance and 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, 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 of this grievance or any contractual defenses the Board may have.

Ridgefield Park establishes that the Board has a managerial prerogative to decide whether to grant or deny a teacher's request for a transfer. See also Franklin Tp. Bd. of Ed., P.E.R.C. No. 2005-18, 30 NJPER 408 (¶133 2005); Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21, 23 (¶29014 1997). The Association's contention that the Board has exercised this prerogative arbitrarily and in possible violation of the Law Against Discrimination, N.J.S.A. 10:5-3, must be presented in another forum. See Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) (restraining arbitration of claim that non-renewal of employment contract of assistant basketball coach was racially discriminatory; claim had to be brought before Division on Civil Rights). We will therefore restrain arbitration.

ORDER

The request of the Old Bridge Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo and Katz voted in favor of this decision. Commissioner Mastroiani abstained from consideration. Commissioners Fuller and Watkins were not present. None opposed.

DATED: May 26, 2005
Trenton, New Jersey
ISSUED: May 26, 2005