

P.E.R.C. NO. 2008-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLINTON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-074

CLINTON TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Clinton Township Board of Education for a restraint of binding arbitration of a grievance filed by the Clinton Township Education Association. The Commission finds legally arbitrable the challenge to the suspension of a kindergarten teacher for the remainder of a school year. The Association does not seek to arbitrate the subsequent decision not to renew the teacher.

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, Porzio, Bromberg & Newman,  
attorneys (Thomas O. Johnston, on the brief)

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

DECISION

On June 4, 2007, the Clinton 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 Clinton Township Education Association. We find legally arbitrable this challenge to the suspension of a kindergarten teacher for the remainder of a school year. The Association does not seek to arbitrate the subsequent decision not to renew the teacher.

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

The Board represents teachers and certain other employees. The parties' collective negotiations agreement is effective from June 4, 2004 through June 30, 2007. The grievance procedure ends in binding arbitration.

Article XV is entitled Employee Rights. Section 1 is a just cause provision. It provides that no employee shall be disciplined or reprimanded without just cause and subjects such actions to the grievance procedure.

Steve Korba was a non-tenured kindergarten teacher. In early 2007, the Board suspended him with pay pending an investigation into allegedly inappropriate conduct involving another teacher. On March 27, 2007, the superintendent notified Korba that this suspension would be continued pending further administrative review. On March 29, the Association filed a grievance on Korba's behalf asserting that his suspension lacked just cause. On April 24, the superintendent notified Korba that his contract was not being renewed for the 2007-2008 school year. On May 8, the Association demanded arbitration. The demand identifies the grievance to be arbitrated as:

violation of Article XV, Section 1 of the CBA, in that the action by the respondent Board of Education in "letting go" Mr. Korba from his position as a kindergarten teacher and the assignment of a substitute teacher for the remainder of the school year was without just cause and is a disciplinary determination within the meaning of N.J.S.A. 34:13A-5.3. Failure to follow due processes resulted in loss of job.

The remedy sought was reinstatement. 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 merits of this grievance or any contractual defenses the employer may have.

\_\_\_\_\_The Board argues that the dispute is moot because Korba is no longer employed by the Board and not arbitrable because he has an alternate statutory appeal procedure and has filed a petition before the Commissioner of Education seeking an employment contract for the 2007-2008 school year. The Association responds that the petition before the Commissioner does not challenge the suspension and the grievance does not refer to the subsequent non-renewal. The Association claims a right to have an arbitrator decide whether Korba's "suspension and humiliation . . . was without just cause."

An arbitrator may consider a claim that a school board did not have just cause to suspend a non-tenured teacher mid-year, but cannot order the teacher reinstated or paid beyond the end of the year of the terminated contract. Somerset Cty. Vocational/Technical Schools Bd. of Ed., P.E.R.C. No. 97-53, 22 NJPER 410 (¶27224 1996); see also Shamong Tp. Bd. of Ed., P.E.R.C. No. 2005-14, 30 NJPER 400 (¶129 2004); Hunterdon Central Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-92, 18 NJPER 134 (¶23064 1992). That claim is different from the claim before the Commissioner of Education.<sup>1/</sup> Whether the grievance is moot is a question for the arbitrator and outside our limited scope of negotiations jurisdiction. Paterson State Oper. School Dist, P.E.R.C. No. 2001-47, 27 NJPER 126 (¶32047 2001). Accordingly, we will not restrain arbitration over this mid-year suspension of a non-tenured teacher except to the extent, if any, the Association may seek Korba's reinstatement or payment beyond the end of the year.

#### ORDER

The request of the Clinton Township Board of Education for a restraint of binding arbitration over the mid-year suspension is

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<sup>1/</sup> The jurisdiction of the Commissioner of Education under N.J.S.A. 18A:6-9 does not extend to disputes like this one arising under a contractual just cause provision. See Picogna v. Cherry Hill Tp. Bd. of Ed., 249 N.J. Super. 332 (App. Div. 1991)

denied except to the extent, if any, the grievance seeks reinstatement or payment beyond the end of the year.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: September 27, 2007

Trenton, New Jersey