

P.E.R.C. NO. 2012-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COUNTY SPECIAL SERVICES
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2011-083

SALEM COUNTY SPECIAL SERVICES
SCHOOL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment relations Commission denies the request of the Salem County Special Services School District for a restraint of binding arbitration of a grievance filed by the Salem County Special Services School Employees Association. The grievance alleges that the District's Board of Education lacked just cause to terminate, for disciplinary reasons, the employment of a non-tenured teaching staff member. The Commission holds that the mid-year termination is mandatorily negotiable.

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, Comegno Law Group, P.C., attorneys
(Kimberly A. Sukinik, of counsel and Mark G. Toscano,
of counsel and on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Michael C. Damm, of counsel and on the brief)

DECISION

On May 16, 2011, the Salem County Special Services School District petitioned for a scope of negotiations determination. The District seeks to restrain binding arbitration of a grievance that the Salem County Special Services School Employees Association has filed alleging that the District's Board of Education lacked just cause to terminate, for disciplinary reasons, the employment of a non-tenured teaching staff member. We deny the Board's request to restrain arbitration over the teacher's mid-year termination.

The parties have filed briefs and exhibits. The District has filed the certification of its Superintendent of Schools. These facts appear.

The Association represents the District's employees including certificated personnel. The parties' collective negotiations agreement is effective from July 1, 2010 through June 30, 2013. The grievance procedure ends in binding arbitration. The agreement contains a past practices clause. Article 5 "Rights of the Board of Education," provides:

The Board reserves to itself sole jurisdiction and authority over matters of policy and retains the right, subject only to limitations imposed by the language of this Agreement, in accordance with applicable laws and regulations:

* * *

2. To hire, promote, transfer, assign, and retain employees in positions in the School District, and for just cause, to suspend, to demote, discharge, or take other disciplinary action against employees.

The Board assigned a non-tenured teacher to teach mathematics during the 2010-2011 school year at an alternative school containing pupils with disciplinary problems.^{1/} In November, 2010 the teacher had a physical altercation with an

^{1/} The District and the teacher executed an individual contract covering September 1, 2010 through June 30, 2011 that allowed either party to terminate the agreement on 30 days notice. According to the Association, the teacher had been employed by the District for more than two years.

unruly student. The District immediately placed the teacher on leave and conducted an investigation of the incident.^{2/} On December 14, the Superintendent wrote to the teacher advising that he would recommend that the Board of Education terminate the teacher's employment. On December 22, the Superintendent wrote to the teacher relaying that the Board had voted to terminate the teacher's contract and that, pursuant to its provisions, pay and benefits would continue for an additional 30 days.

On January 11, 2011, the Association filed a grievance asserting that the teacher's dismissal constituted discipline without just cause in violation of past practice and Article 5, ¶2 of the parties' agreement. The grievance seeks reinstatement and the payment of all lost wages. The District denied the grievance at all levels of the grievance procedure and the Association demanded arbitration. This petition ensued.

N.J.S.A. 34:13A-5.4d empowers the Commission to determine whether a dispute is within the scope of negotiations under the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. School districts and majority representatives may agree to

^{2/} The District objects to the recitation, in the Association's brief, of facts pertaining to interactions between the teacher and the student that preceded the November 2010 incident, noting that the Association did not submit a certification based on personal knowledge. See N.J.A.C. 19:13-3.6(f)1. We will not consider these allegations and note that the District asserts that they do not affect the disposition of the scope of negotiations issues in dispute.

arbitrate a dispute over a mandatorily negotiable subject.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J.

144 (1978). However, the Commission's jurisdiction is narrow.

Ridgefield Park at 154 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 District may have. We specifically do not determine whether the parties' agreement addresses arbitration of mid-year terminations. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2012-32, 38 NJPER 259 (¶88 2011).

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (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.

The District argues that in terminating the teacher it acted in accordance with the requirements of the individual employment contract and that its collective negotiations agreement with the Association neither permits nor authorizes arbitration over the mid-year termination of a non-tenured teacher. It relies upon Northvale Bd. of Ed. v. Northvale Education Ass'n, 192 N.J. 501 (2007) and Pascack Valley Reg. H.S. Dist. Bd. of Ed. v. Pascack Valley Reg. Support Staff Ass'n, 192 N.J. 489 (2007). It asserts that Mount Holly Township Bd. of Ed. v. Mount Holly Township Education Ass'n, 199 N.J. 319 (2009) is distinguishable based on different facts and different contract language.

The Association notes that the Northvale, Pascack and Mount Holly decisions involved, and were decided upon, issues of interpretation of the specific contracts that are not within the Commission's jurisdiction in a scope of negotiations dispute.^{3/} The Association relies on language in the Act, specifically several passages from N.J.S.A. 34:13A-5.3, that it asserts

^{3/} The Association disputes the Board's assertion that there is no "just cause for discipline" provision in the parties collective negotiations agreement.

authorize binding arbitration of disciplinary disputes and provide that arbitrations should not be halted based on a claim that the dispute is not covered by the parties' agreement.^{4/}

The disciplinary provisions of N.J.S.A. 34:13A-5.3 make grievances challenging mid-year terminations of board of

4/ N.J.S.A. 34:13A-5.3 provides:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes.

* * *

Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

* * *

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

education employees, including non-tenured teaching staff, legally arbitrable. See Shamong Tp. Bd. of Ed., P.E.R.C. No. 2005-14, 30 NJPER 400 (¶129 2004). The District's claim that its obligation was limited to complying with the terms of the written agreement should be made to the arbitrator. See Mount Holly Township Bd. of Ed., 199 N.J. at 329.

ORDER

The request of the Salem County Special Services School District for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Jones, Krengel, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: March 29, 2012

Trenton, New Jersey