

P.E.R.C. NO. 2014-83

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LODI BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-018

LODI EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Lodi Board of Education for a restraint of binding arbitration of a grievance filed by the Lodi Education Association. The grievance asserts that an administrator verbally harassed a tenured teacher using profane language. The Commission finds that the Board has not set forth any argument regarding the negotiability of the grievance and argues the merits.

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, Lindabury, McCormick, Estabrook & Cooper, attorneys (Anthony P. Sciarrillo, of counsel and Marcia L. Mackolin, of counsel)

For the Respondent, Rose Ann Spina, NJEA UniServ Representative

DECISION

On September 30, 2013, the Lodi Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Lodi Education Association. The grievance alleges that on at least two occasions, an administrator verbally harassed a tenured teacher using profane language and loud and harsh tones. As the Board has not advanced any argument as to why the subject of the grievance is not negotiable, we deny the request for a restraint.

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

The Association represents a unit of professional, non-supervisory certificated personnel. The parties' collective negotiations agreement is effective from July 1, 2012 through June 30, 2013. The grievance procedure allows an employee or the Association to initiate a claim "based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions affecting an employee or group of employee." The procedure ends in either binding or advisory arbitration depending on the nature of the grievance.

On March 4, 2013, the Association filed a grievance on behalf of a tenured teacher who also held a coaching position. It asserts:

On two separate occasions, [the teacher] was confronted by [an administrator], in a most unprofessional manner. Finger pointing, loud and harsh tones, profane language repeated over and over is unacceptable coming from an administrator to an employee. All of this was directly (sic) squarely at [the teacher] in an attempt to berate, belittle and intimidate him. One incident took place outside of [the teacher's] classroom and the other in [the high school principal's office with the principal] present. This behavior is totally unacceptable and cannot be tolerated at any level; especially in a school building within earshot of students.

The grievance seeks this relief:

1. That the administrator cease and desist from his behavior;
2. That the superintendent issue a written reprimand to the administrator;

3. That the administrator provide a formal written apology to the teacher.

The grievance was denied by the high school principal, the Superintendent and the Board. On May 6, 2013, the Association demanded arbitration (Docket No. AR-2013-747).

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.

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 Board's brief makes no argument and cites no authority that would support a finding that the subject of the grievance is non-negotiable.<sup>1/</sup> The Board asserts that the grievance does not allege any violation of the CNA. It cites Ridgefield Park, supra., and one other case,<sup>2/</sup> both for the proposition that, in a scope of negotiations case, the Commission does not determine: if the facts are as alleged; the merits of the grievance; whether the parties agreement addresses the subject of the grievance; provides a defense for the employer's action; and if there is a valid arbitration clause covering the subject of the grievance.

The Association points to and attaches a Board policy entitled "Building a Civil Workplace; Avoiding Harassment and Discrimination." It claims that the administrator's conduct violates the express terms of the policy.

Because, as the Board's brief recognizes, Ridgefield Park precludes the Commission from determining whether the agreement

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1/ N.J.A.C. 19:13-3.6(f) requires that a brief filed in support of a scope of negotiations petition cite all pertinent statutes, regulations and cases and apply all relevant negotiability tests and precedents.

2/ The Board also cites Freehold Regional High School District Board of Education, P.E.R.C. No. 2007-065, 33 NJPER 149 (¶53 2007). Freehold, dealt with the appropriate forum to review an increment withholding and is inapposite.

addresses the subject of the grievance, leaving that issue to the arbitrator, we decline to restrain arbitration. Accordingly, the grievance may proceed to arbitration.<sup>3/</sup>

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: May 29, 2014

Trenton, New Jersey

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<sup>3/</sup> We do not speculate before arbitration as to what remedy the arbitrator may fashion if the grievance is sustained. See, e.g., State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457, 458 (¶16162 1985). Nor do we decide if the arbitrator's award will be binding or advisory. See Englewood Board of Education, P.E.R.C. No. 84-13, 9 NJPER 544 (¶14226 1983).