

P.E.R.C. NO. 2016-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ASBURY PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-076

ASBURY PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Asbury Park Board of Education's request for a restraint of binding arbitration of a grievance filed by the Asbury Park Education Association. The grievance contests the transfer of a special education teacher. Finding that the Association failed to challenge the Board's transfer decision as disciplinary under N.J.S.A. 34:13A-27(a) because it did not file a contested transfer petition prior to the deadline set by N.J.A.C. 19:18-2.1, the Commission holds that N.J.S.A. 34:13A-25 prohibits arbitration of the transfer.

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, Schwartz Simon Edelstein & Celso, LLC, attorneys (Alan Schnirman, of counsel; Joshua I. Savitz, on the brief and Richard E. Golden, on the brief)

For the Respondent, Detzky, Hunter & DeFillippo, LCC, attorneys (Stephen B. Hunter, of counsel and on the brief)

DECISION

On June 5, 2015, the Asbury Park Board of Education (Board) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Asbury Park Education Association (Association). The grievance contests the transfer of a special education teacher.

The Board has filed briefs, exhibits and the certification of the Board's Supervisor of Special Education for grades Pre-K through 12 (Supervisor of Special Ed.). The Association has filed a brief, exhibits, and the certification of the grievant. These facts appear.

The Association represents all certified members of the professional staff, excluding administrative and supervisory personnel, employed by the Board. The Board and the Association are parties to a CNA in effect from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration.

Grievant has been employed by the Board for 22 years and was a Self-Contained Behavioral Disabilities (Behavioral Disabilities) teacher at Bradley Elementary School (Bradley Elementary) during the 2014-2015 school year.

Based upon the Supervisor of Special Ed.'s recommendation, the Interim Director of Special Services (Interim Director) recommended to the Superintendent of Schools (Superintendent) that grievant be reassigned to serve as an In-Class Resource teacher for Asbury Park High School's (Asbury High) Personal Finance class starting in January 2015. In turn, based upon the Superintendent's recommendation, grievant's transfer was among several other Special Education teacher reassignments considered by the Board.

On December 16, 2014, the Board voted to reassign grievant from Bradley Elementary to Asbury High effective January 5, 2015. On December 17, 2014, the Superintendent issued a memorandum to grievant formally notifying her about the reassignment. On January 6, 2015, the Association filed a grievance claiming that grievant's transfer was disciplinary in nature and requested that

same be reversed immediately. The grievance was denied at all steps of the process. On March 6, 2015, the Association demanded binding arbitration. This petition ensued.

The Board asserts that N.J.S.A. 34:13A-25 precludes arbitration of this grievance and N.J.S.A. 34:13A-27 requires that the Commission, rather than an arbitrator, determine whether a contested transfer between schools was in fact disciplinary. The Board also maintains that its transfer decision was based upon educational considerations and the grievant's significantly compromised student-teacher-parent relationship.

The Association argues that grievant was transferred for disciplinary reasons. Specifically, there were two parental complaints filed with the State of New Jersey Department of Children and Families Institutional Abuse Investigation Unit that were ultimately determined to be unfounded. The Association also maintains that neither N.J.S.A. 34:13A-25 nor N.J.S.A. 34:13A-27 prohibit arbitration over the basis for the transfer.

N.J.S.A. 34:13A-25 provides:

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.

N.J.S.A. 34:13A-27(a) provides:

If there is a dispute as to whether a transfer of an employee between work sites...is disciplinary, the commission shall determine whether the basis for the transfer...is predominately disciplinary.

These provisions prohibit binding arbitration over all transfers of school board employees between work sites. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2001-39, 27 NJPER 94 (¶32035 2001).

Thus, in order to challenge the Board's decision to transfer grievant, it was incumbent upon either the Association or the grievant to file a contested transfer petition with the Commission.^{1/} They failed to do so. Given the statutory prohibition, "the reasons for the transfer between work sites are immaterial."^{2/} Hamilton Tp. Bd. of Ed. Moreover, we find the Association's reliance on West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001) to be inapposite given that the Commission's consideration of that matter stemmed from the filing of a contested transfer petition.

Accordingly, the Board's request to restrain arbitration is granted.

1/ Pursuant to N.J.A.C. 19:18-2.1, "[a]ny employee...or the employee's majority representative may initiate a contested transfer proceeding...". N.J.A.C. 19:18-2.3 sets the deadline for filing a contested transfer petition with the Commission as "no later than the 90th day from the date of receipt of a notice of transfer."

2/ The Commission notes that grievant filed a contested transfer petition approximately six years ago related to a different transfer. See Asbury Park Bd. of Ed. and Cordelia Golden, P.E.R.C. 2010-87, 36 NJPER 225 (¶79 2010).

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: October 29, 2015

Trenton, New Jersey