

P.E.R.C. NO. 2020-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2020-034

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Ridgefield Park Board of Education for a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association which alleges that the Board violated the parties' collective negotiations agreement when it failed to hire the grievant as head football coach, an extracurricular position. The Commission finds that the Board's decision not to hire the grievant as the football coach is legally arbitrable because N.J.S.A. 34:13A-23 expressly permits a school district to agree to arbitrate disputes over the assignment of employees to extracurricular positions. The Board's asserted reasons in support of its decision relate to the merits of the grievance and may be presented to the arbitrator.

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.

P.E.R.C. NO. 2020-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2020-034

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Porzio Bromberg & Newman, P.C.,
attorneys, (Kerri A. Wright, of counsel and on the
brief)

For the Respondent, Springstead & Maurice, Esqs.,
attorneys (Alfred F. Maurice, on the brief)

DECISION

On December 19, 2019, the Ridgefield Park Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association (Association). The grievance alleges that the Board violated Article XIII, Section E of the parties' collective negotiations agreement (CNA) when it failed to hire the grievant as head football coach in contravention of the Interim Superintendent's recommendation advising the Board to do so.

The Board filed a brief, exhibits and the certification of its counsel, Kerri A. Wright, Esq. The Association filed a brief

and the certification of NJEA Uniserv Field Representative, Josphe Tondi. These facts appear.

The Association represents athletic trainer, classroom teachers, custodians, building and grounds, maintenance, deans of students, guidance counselors, home instruction teachers, learning disabilities teacher-consultants, librarians, nurses, psychologists, secretaries (subject to the exclusions listed in the CNA), social workers, special education teachers, speech therapists, supplemental instructors, physical therapists, occupational therapists and teacher assistants; but excluding certain titles as enumerated in the CNA. The Board and Association are parties to a CNA in effect from July 1, 2018 through June 30, 2021. The grievance procedure ends in binding arbitration.

Article XIII of the parties CNA, titled "Teachers' Selection," Section E, provides in pertinent part:

The Board shall consider in house applicants for extra compensation and coaching positions prior to consideration of outside applicants. The Board retains sole discretion to select the candidate it determines to be most qualified. In the event the Board receives no internal applicants (i.e. no staff member volunteers to accept the position) acceptable to the Board the Board retains the right to appoint a non-volunteer staff member.

On March 13, 2019, Interim Superintendent Dr. Mark Hayes recommended the grievant for the position of head football coach for the Ridgefield Park High School. At the time, the grievant

was employed by the Board as a teaching assistant. The Board considered the Superintendent's recommendation at its March 20 meeting and voted not to approve the grievant for the position. The Board reached that determination for various reasons, including, but not limited to, the grievant's qualifications, inappropriately contacting the child of a Board member to campaign for the position, and the grievant handing his resume to a Board member while out in public socially.

Tondi certifies that Article XIII, Section E of the parties' CNA was intentionally included to ensure that unit members would have the first opportunity to obtain stipend and coaching positions in the District.

According to Tondi, prior to the 2018 football season, the grievant applied for the position of head football coach. The grievant had many years of experience coaching football in Ridgefield Park and elsewhere. After completing his application, he was interviewed by both the Athletic Director and Superintendent of Schools. Both administrators recommended that the Board hire the grievant for the football coaching position.

On May 21, 2019, the Association filed a grievance with the Board arguing that the Board's decision to not hire the grievant was "without just cause" and a violation of the CNA regarding teaching assignments. On May 28, the Board informed the Association's Grievance Chairperson that it was denying the

grievance. On June 28, the Association filed a request for submission of a panel of arbitrators. 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 merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (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. [Id. at 404-405].

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

Where a statute or regulation is alleged to be preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Ed. of Higher Ed., 91 N.J. 18, 30 (1982); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). If a particular item in dispute is controlled by a specific statute or regulation, the parties may not include any inconsistent term in their agreement. Id.

N.J.S.A. 18A:27-4.1(a) provides:

A board of education shall appoint, transfer or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons.

The Board argues that the subject of the Association's grievance is within the jurisdiction of the Commissioner of Education. Specifically, the Association's claim that the Board's rejection of the Superintendent's recommended candidate was arbitrary and capricious. The Board's further argues that its determination of whether to appoint a particular teaching staff member to a position pursuant to N.J.S.A. 18A:27-4.1 is an exercise of its managerial prerogative.

The Association responds that its grievance concerns the Board's violation of Article XIII E and past practice when it reached outside the CNA and hired a "non-district" football coach.

We do not agree with the Board that its assignment of a "non-district" coach is outside the scope of negotiations. Our Act expressly permits a school district to agree to arbitrate disputes over the assignment of an employee to an extracurricular positions. N.J.S.A. 34:13A-23 provides:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district

any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

Since the enactment of N.J.S.A. 34:13A-23, we have regularly held that a school board's hiring decisions for coaches and other extracurricular positions are legally arbitrable. See, Belleville Tp. Bd. of Ed. and Belleville Ed. Ass'n, P.E.R.C. No. 2015-72, 41 NJPER 490 (¶151 2015), aff'd, 24 NJPER 503 (¶140 App. Div. 2016) (Board's decision to non-renew assistant baseball coach is arbitrable, but the decision to eliminate one baseball coach position is not negotiable); Union Cty. Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 98-98, 24 NJPER 119 (¶29060 1998) (Board's decision to replace baseball coach with a different person was arbitrable); Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-29, 21 NJPER 391 (¶26240 1995) (Board's decision to replace basketball coach due to alleged improper behavior during games was arbitrable); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993) (Board's decision to replace soccer coach due to the teacher's alleged inappropriate in-class behavior was arbitrable); Cinnaminson Tp. Bd. of Ed., P.E.R.C. No. 93-59, 19 NJPER 111 (¶24051 1993) (Board's decision to replace basketball coach was arbitrable); Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER XX (¶22038 1991) (Board's decision to not rehire teacher to either baseball or basketball coaching positions was arbitrable). We have also restrained arbitration where the

grievance challenged the board's qualifications for a coaching position. See Kenilworth Bd. of Ed., P.E.R.C. No. 93-86, 19 NJPER 214 (¶24103 1993) (Board's determination that girls and boys basketball teams should be coached by different coaches was not arbitrable).

Applying N.J.S.A. 34:13A-23, and the Commission and court precedent interpreting it, we find that the Board's decision to not hire the grievant as the football coach is legally arbitrable. Jackson Tp. Bd. of Ed. v. Jackson Tp. Ed. Ass'n, P.E.R.C. No. 99-62, 25 NJPER 87 (¶30037 1990), aff'd 334 N.J. Super. 162 (App. Div. 2000), certif. denied, 165 N.J. 678 (2000). (N.J.S.A. 34:13A-23 permits arbitration of grievance challenging the non-renewal of gold coach). The reasons the Board has provided to support its decision relate to the merits of the grievance and may be presented to the arbitrator. Ridgefield Park.

ORDER

Ridgefield Park Board of Education's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: June 25, 2020

Trenton, New Jersey