

P.E.R.C. NO. 89-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-77

HACKENSACK CUSTODIAL AND
MAINTENANCE ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Hackensack Board of Education's motion to reconsider P.E.R.C. No. 89-62, 14 NJPER ___ (¶ 1988). In that case, the Commission declined to restrain binding arbitration of a grievance contesting a custodian's discharge. The Commission determined that the employee has no right to a tenure hearing under N.J.S.A. 18A:6-10. His mid-year disciplinary discharge is therefore arbitrable. The motion does not present any extraordinary circumstances why the Commission should reconsider its holding.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, Esqs. (Lester Aron and
James L. Plosia, Jr., of counsel)

For the Respondent, Bucceri and Pincus, Esqs.
(Gregory T. Syrek, of counsel)

DECISION AND ORDER ON MOTION FOR RECONSIDERATION

On December 15, 1988, the Hackensack Board of Education ("Board") moved for reconsideration of P.E.R.C. No. 89-62, 14 NJPER ____ (¶ ____ 1988). There we declined to restrain binding arbitration of a grievance contesting a custodian's discharge. On December 19, the Hackensack Custodial and Maintenance Association ("Association") filed a reply opposing reconsideration.

The Board argues that we failed to consider its argument that nontenured but tenure-eligible custodians, like nontenured teachers, may not arbitrate a decision to terminate them before they gain tenure. The Association argues that this nontenured custodian had no alternate statutory procedure to appeal his mid-year discharge. It claims that nontenured, noninstructional personnel may arbitrate claims of improper discharge.

N.J.S.A. 34:13A-5.3 permits binding arbitration of discharges unless the employee has an alternate statutory procedure to appeal the employer's action. This employee was eligible for but had not yet obtained tenure. He has no right to a tenure hearing under N.J.S.A. 18A:6-10. His mid-year disciplinary discharge is therefore arbitrable. Wyckoff Tp. Bd. of Ed. v. Wyckoff Ed. Ass'n, 168 N.J. Super. 497 (App. Div. 1979), Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986) and Trenton Bd. of Ed., P.E.R.C. No. 85-62, 11 NJPER 25 (16013 1984) are inapposite. Wyckoff concerned the nonrenewal of nontenured teachers and Hunterdon concerned nonrenewals of nontenured teachers after the third year of employment. Trenton concerned administrators with an alternate statutory appeal procedure or protection under the tenure laws. This dispute concerns the midterm discharge of a nontenured custodian and does not implicate the "congruent involvement of teacher and student." Wright v. East Orange Bd. of Ed., 99 N.J. 112, 121 (1985); see also Essex Cty. College, P.E.R.C. No. 88-63, 14 NJPER 123 (¶19046 1988).^{1/} This employee has no statutory appeal rights since he is not protected under the tenure laws.

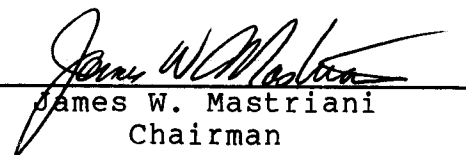
^{1/} This case does not concern a nonrenewal. The parties' contract provides that "[t]he grievance procedure shall not be applicable to claims by non-tenured employees by reason of their not being re-employed."

This motion does not present any extraordinary circumstances why we should reconsider our holding. N.J.A.C. 19:14-8.4.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
January 9, 1989
ISSUED: January 10, 1989