

P.E.R.C. NO. 86-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
BOROUGH OF BERNARDSVILLE,

Petitioner,

-and-

Docket No. SN-85-104

BERNARDSVILLE EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Bernardsville Education Association's motion for reconsideration of a previous scope of negotiations determination. The Commission finds that the requisite extraordinary circumstances for reconsideration do not exist.

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Appearances:

For the Petitioner, Schwartz, Pisano & Simon, Esqs.
(Lawrence S. Schwartz and Nathanya G. Simon, of
Counsel)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On October 17, 1985, the Public Employment Relations Commission restrained binding arbitration of a grievance the Bernardsville Education Association ("Association") had filed against the Bernardsville Board of Education ("Board"). P.E.R.C. No. 86-47, 11 NJPER 688 (¶16237 1985). This grievance had alleged that the Board violated its collective negotiations agreement with the Association when it transferred Muriel Johnson, a payroll clerk/administrative secretary, to the position of guidance office secretary.^{1/}

^{1/} A second grievance alleged that the withholding of Johnson's increment violated the agreement. The Commission did not restrain arbitration of that grievance.

On November 6, 1985, the Association moved for reconsideration of the order restraining arbitration of the grievance challenging Johnson's transfer. It asserts that the transfer was a disciplinary demotion and legally arbitrable under N.J.S.A. 34:13A-5.3. It asserts in particular that Johnson has been demoted from a position on the Administrative B salary guide to a position on the General A salary guide and, as a result, the top salary she can earn has been lowered. Finally, it asks that the Commission reconsider its analysis of Wright v. Bd. of Ed. of City of East Orange, 99 N.J. 112 (1985) ("Wright") and hold that transfers of supportive staff employees may be challenged through binding arbitration regardless of whether the transfers are disciplinary.

The Board opposes reconsideration. The Board asserts that a transfer from one secretarial position to another does not violate tenure rights under school laws and should not be considered disciplinary regardless of whether future salary expectancies are diminished. It relies on Mackey v. Bd. of Ed. of Borough of Richfield, Comm. of Ed. #____, 1983 S.L.D. ____ (March 2, 1983) and Williams v. Plainfield Bd. of Ed., 176 N.J. Super. 154 (App. Div. 1980).

The Association has filed a letter responding to the Board's opposition.

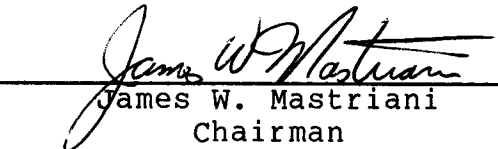
We deny the Association's motion for reconsideration. Under Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 (1978) and Local 195, IFPTE v. State, 88 N.J. 393 (1982),

transfers are generally not negotiable or arbitrable. We do not believe Wright changes the holding of those cases. A particular transfer may nevertheless be arbitrable under the amendment to N.J.S.A. 34:13A-5.3 if it is in fact a disciplinary demotion and the employee does not have an alternate statutory appeal procedure to contest that demotion. Here, however, the Board indisputably maintained Johnson's present salary and the fact that Johnson might suffer a future loss in salary or that such a loss should be considered a form of discipline was neither presented nor argued. We do not believe the Association should be permitted to introduce this argument now: extraordinary circumstances for reconsideration do not exist. 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. Commissioner Reid abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986