

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN LAKES BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-022

FRANKLIN LAKES EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Board's request for a restraint of binding arbitration of the Association's grievance alleging that a Board member had been intimidating Association members in violation of a collective negotiations agreement (CNA) clause concerning the protection of employees. Finding that the Association was not seeking to arbitrate over a School Ethics Act issue under the jurisdiction of the School Ethics Commission, but was only seeking to arbitrate an alleged violation of the CNA regarding a term and condition of employment not normally within the jurisdiction of the Department of Education, the Commission declines to restrain arbitration.

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. 2019-38

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Appearances:

For the Petitioner, Fogarty & Hara, attorneys (Stephen R. Fogarty, of counsel and on the brief; Christopher J. Geddis, on the brief)

For the Respondent, Springstead & Maurice, Esqs., attorneys (Alfred F. Maurice, of counsel and on the brief; Lauren McGovern, of counsel and on the brief)

DECISION

On September 17, 2018, the Franklin Lakes Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Franklin Lakes Education Association (Association). The Association's March 26, 2018 grievance alleges that a Board member has been "continuously intimidating" Association members and such conduct violates, inter alia, the parties' collective negotiations agreement (CNA).

The parties have filed briefs, certifications and exhibits. These facts appear.^{1/}

The Association represents the Board's teachers, instructional aides, and administrative assistants. The Association and the Board are parties to a CNA with a term of July 1, 2016 through June 30, 2017 which includes a grievance procedure that ends in binding arbitration. Article XVIII, entitled "Protection of Employees, Students, and Property", provides in pertinent part:

A. Employees shall not be required to work under unsafe or hazardous conditions or to perform tasks, which endanger their health, safety or well-being.

* * *

E. Employees shall immediately report cases of assault suffered by them in connection with their employment to their administrator. Such notification shall be immediately forwarded to the Superintendent who shall comply with any reasonable request from the employee for information in the possession of the Superintendent relating to the incident or the persons involved.

In addition to an alleged violation of Article XVIII, the Association's grievance also asserted violations of the School Ethics Act (SEA), N.J.S.A. 18A:12-21 et seq., and Franklin Lakes School Board Policy 9271 "Code of Ethics". On May 8, 2018, the Board held a grievance hearing. By letter dated May 11, the

^{1/} The Association has sought an evidentiary hearing. However, it does not specify disputed factual issues warranting a hearing. We deny its request. See N.J.A.C. 19:13-3.7.

Board denied the grievance stating that there was no violation cognizable under the grievance procedure and that there was no evidence of any assault against any employee. Moreover, the Board stated there was no CNA violation because there were no adverse employment actions taken against any employees. The Board described the Board member's alleged misconduct, detailed at the hearing, as that of a parent rather than acting as a Board member. 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 these grievances or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets 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.

Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so "expressly, specifically, and comprehensively." 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).

Where the statute or regulation is preemptive, if the subject matter concerns a term and condition of employment, disputes over that issue can be subject to binding arbitration, but any decision may not contravene the pertinent statute or rule. W. Windsor Tp. v. PERC, 78 N.J. 98, 116 (1978); see also Hoboken Bd. of Ed. and Hoboken Teachers Ass'n, P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), app. disp. 93 N.J. 263 (1983) (finding that two Title 18A statutes, pertaining to how many unused sick days could

be added to the number which could be accumulated from year to year, did not set a specific method of calculation and therefore did not preclude negotiation on that specific term and condition of employment).

The Board argues that the Board member's alleged intimidating conduct is not grievable under the CNA, but rather, is an alleged violation of the SEA, and pursuant to N.J.A.C. 6A:28-1.4, must be adjudicated by the School Ethics Commission (SEC).^{2/} Thus, the Board argues that this dispute is preempted and not legally arbitrable.

The Association responds that it is not seeking arbitral review of any possible violations of the SEA. Rather, it is seeking arbitral review of whether its allegations violate Article XVIII of the CNA only.

In its reply, the Board reiterates that censure of Board member misconduct, such as the type cited by the Association, is the exclusive jurisdiction of the SEC.

The Association has a right to police and enforce the health and safety provisions of the CNA. Mercer Cty., P.E.R.C. No.

2/ N.J.S.A. 18A:12-22(b) states:

To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

2006-59, 32 NJPER 39 (¶21 2006); see also Perth Amboy, P.E.R.C. No. 98-146, 24 NJPER 311 (¶29148 1998), Willingboro Tp. Bd. of Ed., P.E.R.C. No. 90-27, 15 NJPER 604 (¶20249 1989).

We reject the Board's argument that the Association's claims about the Board member's conduct are preempted by the SEA, specifically N.J.A.C. 6A:28-1.4 which states, "[t]he School Ethics Commission shall have jurisdiction over matters arising under the [SEA]." The Association is seeking to arbitrate an alleged violation of the CNA only, not an alleged violation of the SEA.

Even if this dispute has implications under the SEA, the Association's instant claim addresses a term and condition of employment involving interpretation of a CNA that is not normally within the jurisdiction of the Department of Education. N. Hunterdon- Voorhees Reg. H.S. Bd. of Ed., P.E.R.C. No. 2012-36, 38 NJPER 281 (¶96 2012) (rejecting the Board's argument that interpretation of a Title 18A statute was within the sole discretion of the Commissioner of Education where the dispute involved interpretation of a CNA); see also Settle v. Bd. of Ed. of the Tp. of Pennsville, E.D.U. #137-01, Comm. of Ed. 4/26/2001) (finding that a grievance contesting the conduct of a Board member was not properly before the Commissioner of Education since he has no jurisdiction to enforce or interpret CNAs, and

that the proper jurisdiction laid with the Public Employment Relations Commission).

The Board's reliance on Castriotta v. Bd. of Ed. of the Tp. of Roxbury, EDU 09217-10, initial decision (Apr. 4, 2011), rev'd on other grounds, 427 N.J. Super. 592 (App. Div. 2012) is distinguishable from the instant case. Castriotta held that a board's resolution censuring a board member's conduct was invalid because the SEC had exclusive jurisdiction to enforce the SEA. Unlike the matter here, in Castriotta, the complaint against the board member's conduct was from school administrators and other board members and did not involve interpretation or enforcement of a CNA. The Board has not cited any decisions under the SEA involving a dispute arising under a CNA.

Whether the Board member's alleged misconduct violated Article XVIII (e.g. endangered any employee's well being) is a matter of contractual interpretation that is mandatorily negotiable and legally arbitrable. The Board's contractual defenses (e.g. that the Board member was not acting in her capacity as a Board member, but rather as a parent, or that the alleged misconduct was not immediately reported in violation of Article XVIII, E) may be raised to the arbitrator. We will not speculate about proper remedies if any violations are proven.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: March 20, 2019

Trenton, New Jersey