

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-24

MIDDLETOWN TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Middletown Township Education Association against the Middletown Township Board of Education. The grievance contests the Board's decision not to reappoint a basketball coach. N.J.S.A. 34:13A-23 expressly permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. In addition, a grievance may legally contest an alleged failure to follow negotiated evaluation procedures, including third party complaint procedures. Accordingly, the Commission determines this grievance is legally arbitrable.

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, Kalac, Newman, Lavender & Campbell,
attorneys (Howard M. Newman, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Kenneth I. Nowak, of counsel)

DECISION AND ORDER

On September 15, 1994, the Middletown Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Middletown Township Education Association. The grievance contests the Board's decision not to reappoint a basketball coach.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1993 to June 30, 1996. Article 19.15a states that participation in extracurricular activities is

voluntary and participants will be compensated in accordance with schedules attached to the agreement. Article 34 is entitled "Complaint Procedure." It provides:

34.1 Any complaint regarding a professional employee made to any member of the administration by any parent, student, or member of the public which does or may influence evaluation of a professional employee shall be promptly called to the professional employee's attention following the initial investigation of the complaint by the Administration or the Board.

34.2 Prior to taking any disciplinary action predicated upon a complaint by a parent, student, or member of the public, the complainant shall be identified and the professional employee shall have the opportunity to respond to and/or rebut such complaint and shall be entitled to representation provided by the Association.

The agreement's grievance procedure ends in binding arbitration.

Raymond McLoughlin began as a full-time teacher in 1976. He has also held several district coaching positions since 1978, including varsity basketball coach at Middletown North High School from 1989 through the 1992-1993 school year.

On April 27, 1993, all extracurricular jobs for the 1993-1994 school year were posted. McLoughlin applied for reappointment as varsity basketball coach. No appointment was made before the end of the 1992-1993 school year.

In early October 1993, McLoughlin was told that the coaching position would be reposted. He was also told that parents had complained about his coaching. On October 13, 1993, McLoughlin was shown, allegedly for the first time, a May 26, 1992 letter to the Board from the parents of one of his players. The letter

detailed several allegations of improper behavior during games and practices.

On October 21 and 24, 1993, respectively, the Board reposted the position and advertised it in the Star Ledger. McLoughlin again applied. The Board appointed an applicant from outside the district. McLoughlin submitted a response to the parents' letter.

On November 12, 1993, the Association filed a grievance alleging that the Board's failure to reappoint McLoughlin violated Articles 19.15a and 34, applicable state law, and a prior grievance settlement. It sought reinstatement of McLoughlin as basketball coach with back pay and a written assurance that the administration would adhere to the contract, past practice, state law and past arbitration awards.

The Board denied the grievance and the Association demanded arbitration. This petition ensued. The Association also filed a petition with the Department of Education alleging that the non-reappointment of McLoughlin and the appointment of a non-district employee violated N.J.A.C. 6:29-3.3.^{1/}

^{1/} That regulation provides:

(a) Any person not certified as a teacher and not in the employ of a district board of education shall not be permitted to organize public school pupils during school time or during any recess in the school day for purposes of instruction, or coaching or for conducting games, events or contests in physical education or athletics.

Footnote Continued on Next Page

The Board does not object to arbitrating whether it violated Article 34, but asserts that it cannot be compelled to arbitrate an employee's non-retention in a non-tenured position. It also contends that the agreement lacks any procedures for appointment to extracurricular positions.

1/ Footnote Continued From Previous Page

(b) School districts shall be permitted to employ any holder of a New Jersey teaching certificate to work in the interscholastic athletic program provided that the position has been advertised.

(c) In the event there is no qualified and certified applicant, the holder of a county substitute certificate is authorized to serve as an athletic coach in the district in which he or she is employed for a designated sports season, provided that:

1. The district chief school administrator demonstrates to the county superintendent that:

i. The vacant coaching position had been advertised; and

ii. There was no qualified applicant based on the written standards of the district board of education.

2. The district chief school administrator will provide a letter to the county superintendent attesting to the prospective employee's knowledge and experience in the sport in which he or she will coach; and

3. Approval of the county superintendent shall be obtained prior to such employment by the district board of education. The 20-day limitation noted in N.J.A.C. 6:11-4.4(i) shall not apply to such coaching situations.

The Association contends that the Board's failure to follow a third party complaint procedure can form the basis of a grievance over a non-reappointment to an extracurricular position. It cites West Orange Bd. of Ed., P.E.R.C. No. 92-128, 18 NJPER 365 (¶23159 1992). It asserts that the Board's decision not to reappoint the grievant stemmed from outside complaints that the grievant was not permitted to address.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154]

Thus, we do not consider whether the grievance is contractually arbitrable, whether the contract affords any rights regarding retention in coaching positions, or whether the Board has violated any contractual articles.

Before 1990, extracurricular appointments and retentions were not mandatorily negotiable or legally arbitrable. Teaneck Teachers Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981).

But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

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.

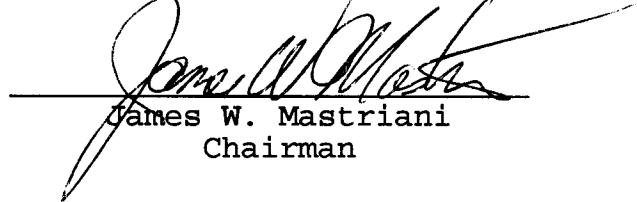
This statutory amendment expressly permits an employer to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. We have thus held that non-renewals of coaches are legally arbitrable under the express language of this amendment. See Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Cinnaminson Bd. of Ed., P.E.R.C. No. 93-59, 19 NJPER 111 (¶24051 1993); Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991). In addition, a grievance may legally contest an alleged failure to follow negotiated evaluation procedures, including third party complaint procedures. West Orange. Accordingly, this grievance is legally arbitrable.^{2/}

^{2/} The Association's petition before the Department of Education raises a different and severable issue from the grievance: whether the Board violated N.J.A.C. 6:29-3.3 in appointing an out-of-district coach. See Kenilworth Bd. of Ed., P.E.R.C. No. 93-86, 19 NJPER 214, 215 (¶24103 1993); but see Krupp v. Union Cty. Reg. H.S. District #1 Bd. of Ed., 278 N.J. Super. 31 (App. Div. 1994), certif. den. 140 N.J. 277 (1995).

ORDER

The request of the Middletown Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: October 31, 1995
Trenton, New Jersey
ISSUED: November 1, 1995