

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON BOROUGH BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-40

WASHINGTON BOROUGH EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Washington Borough Board of Education for a restraint of binding arbitration of a grievance filed by the Washington Borough Education Association. The grievance asserts that the Board improperly accepted a custodian's oral resignation. The Commission finds that this dispute centers on the procedures for submitting and accepting resignations - must a resignation be in writing to be effective and can it be retracted before acceptance? The Commission determines that no statute or regulation mandates that an oral resignation be effective and unretractable. An agreement to require a written resignation and to permit retractions before acceptance would intimately and directly affect employees by protecting them against rash decisions and would not significantly interfere with any educational policy determinations. Accordingly, 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. 98-110

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Appearances:

For the Petitioner, Broscius, Glynn & Fischer, attorneys
(Raenee' K. Mantoni, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On October 23, 1997, the Washington Borough Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Washington Borough Education Association. The grievance asserts that the Board improperly accepted a custodian's oral resignation.

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

The Association represents the Board's custodians. The parties' collective negotiations agreement has a grievance procedure ending in binding arbitration. The grievance procedure excludes a "[d]ismissal or failure to renew a contract of a non-tenured employee if for other than disciplinary reasons."

The Board employed John Latourette as a custodian for several years. According to the Board, he was granted tenure on May 11, 1993. According to the Association, Latourette was employed pursuant to a series of fixed term contracts and thus never gained statutory tenure under N.J.S.A. 18A:17-3.

In March 1997, the superintendent informed Latourette that his salary increment would be withheld the next year. Latourette grieved the withholding and was informed that his grievance would be discussed at a Board meeting on May 13.

On or about May 8, 1997, Latourette had a dispute with his supervisor, Gary Apgar. Latourette momentarily became angry and told his supervisor he quit. Latourette did not submit a written resignation.

On May 12, 1997, an NJEA UniServ Representative informed the superintendent that Latourette was rescinding his oral statement of resignation and that he wished to return to work.

On May 13, 1997, the Board accepted Latourette's oral resignation. Neither Latourette nor an Association representative attended that meeting. On May 15, the superintendent sent Latourette a letter notifying him that his resignation had been accepted.

On May 27, 1997, the Association filed a grievance. The grievance asserted that "the Board should not have accepted his resignation as he did not formally resign his position as custodian with a letter of resignation." The superintendent and the Board denied the grievance.

The Association demanded arbitration. It identified the grievance to be arbitrated as:

The Board has improperly dismissed John Latourette, custodian, and has improperly withheld his earned vacation time.

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 contractual merits of this grievance or any contractual defenses the Board may have. We specifically decline to consider whether the dispute is contractually grievable or arbitrable.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets forth these standards for determining the negotiability of a subject:

[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]

Applying these tests, we hold that the parties' dispute over the acceptance of Latourette's resignation is legally arbitrable.^{1/}

The Association asserts that the Board improperly accepted Latourette's oral resignation given that he never put this resignation in writing and the resignation was withdrawn before the Board accepted it. This dispute thus centers on the procedures for submitting and accepting resignations -- must a resignation be in writing to be effective and can it be retracted before acceptance? No statute or regulation mandates that an oral resignation be effective and unretractable. An agreement to require a written resignation and to permit retractions before acceptance would intimately and directly affect employees by protecting them against rash decisions and would not significantly interfere with any educational policy determinations. We accordingly decline to restrain arbitration.^{2/}


^{1/} The Board has not sought a restraint of arbitration over the claim that Latourette's earned vacation pay was improperly withheld.

^{2/} We need not determine whether Latourette had tenure since no tenure charges have been brought and the focus of this dispute is not whether the Board had good cause to discharge Latourette, but whether the Board properly accepted an oral resignation.

ORDER

The request of the Washington Borough Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998