

P.E.R.C. NO. 93-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIVER EDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-18

RIVER EDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the River Edge Education Association against the River Edge Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it refused to appoint a tenured custodian to the position of lead custodian. The Commission finds that if the lead custodian position is a new one, the Board has a prerogative to appoint the most qualified person. If the grievant was demoted, then he has an alternate statutory appeal procedure for contesting that demotion.

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Appearances:

For the Petitioner, Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel; Deborah Ustas, on the
brief)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION AND ORDER

On August 25, 1992, the River Edge Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the River Edge Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it refused to appoint Nick Raymond to the position of lead custodian.

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

The Association represents the Board's certificated employees, custodians and maintenance employees, and secretaries.

The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1993. The grievance procedure ends in binding arbitration of matters specifically covered by the agreement.

Before September 1989, the Board's custodial department had one head custodian, one day custodian, and one night custodian in each of two schools. Nick Raymond was a head custodian. Pursuant to the collective negotiations agreement, he had tenure.

In September 1989, the Board reorganized the department so that a supervisor of buildings and grounds oversaw both schools; a chief of maintenance was assigned to both schools and reported to the supervisor; and a day custodian and a night custodian worked at each school. Raymond was appointed to the position of chief of maintenance. His salary did not change. According to the Board, the position of chief of maintenance required specific skills in carpentry, electrical tasks, and plumbing and did not involve cleaning.

On July 1, 1991, the positions of supervisor of buildings and grounds and chief of maintenance were eliminated. In their place, the Board created two new positions titled lead custodian. Each lead custodian supervises one school building and reports to the principal of that building. Raymond and four other members of the custodial staff applied for these positions. Raymond was not selected and therefore reverted to the position of day custodian.

The parties agreed that Raymond's salary would not be reduced, but he would not receive a raise until the day custodian salary guide required one. According to the Board, the focus of the lead custodian is on coordinating the custodial staff and ensuring a clean, sanitary and safe building environment.

On July 27, 1991, the Association filed a grievance asserting that Raymond had been removed from the job of head custodian/lead custodian without just cause. It requested that he be given the position of lead custodian.

On August 5, 1991, the board secretary/business manager denied the grievance. She asserted that the lead custodian positions were given to the applicants deemed most qualified.

On September 24, 1991, the superintendent met with the Association's grievance chairperson. On October 7, 1991, he also denied the grievance. The chairperson contended that the positions of lead custodian and head custodian were similar enough to warrant appointing Raymond to the new position. The Superintendent, however, concluded that the "job descriptions and the actual jobs are different enough to open a search and hire the most qualified person for the job."

On December 4, 1991, the Board denied the grievance. It concluded that the grievance was not arbitrable and that, in any event, it lacked merit. The Association demanded binding arbitration. This petition ensued.

The Board contends that it had a managerial prerogative to select the most qualified employees to be lead custodians and that the Association's contention that Raymond, a tenured employee, was unjustly demoted must be presented to the Commissioner of Education. The Association contends that the reorganization was a change in name only, designed to remove Raymond from the position of chief of maintenance without complying with negotiated just cause protections.

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 the grievance or any contractual defenses the Board may have.

The parties disagree over the issue of whether the job descriptions and duties of the head custodian and lead custodian are different. No job descriptions or affidavits concerning job duties have been submitted. That factual question need not be resolved since this dispute is not legally arbitrable in any event.

The Board is correct that public employers generally have a prerogative to appoint the most qualified person to a new position. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 16 (1983). If the position of lead custodian is in fact a new one, then this dispute is not mandatorily negotiable or legally arbitrable.

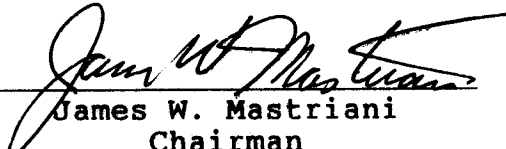
The Association is correct that the discipline amendment to N.J.S.A. 34:13A-5.3 authorizes binding arbitration of some disciplinary disputes. However, if an alternate statutory appeal procedure exists for contesting a particular disciplinary determination, then that determination is not legally arbitrable. CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984). Raymond is an employee with undisputed tenure rights under N.J.S.A. 18A:17-3 who can petition the Commissioner of Education under N.J.S.A. 18A:6-10 to redress those tenure rights if he was reduced in rank without good cause. Contrast Dumont Bd. of Ed., P.E.R.C. No. 93-17, 18 NJPER 450 (¶23202 1992) and Emerson Bd. of Ed., P.E.R.C. No. 92-85, 18 NJPER 102 (¶23047 1992) (employees appointed for fixed terms and therefore not tenured). Thus, even if we assume that the reorganization was a change in name only and Raymond was therefore demoted, Raymond has an alternate statutory appeal procedure for contesting that demotion.

For these reasons, this dispute is not legally arbitrable.

ORDER

The request of the River Edge Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993
Trenton, New Jersey
ISSUED: January 29, 1993