

P.E.R.C. NO. 88-141

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-22

ENGLEWOOD TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Englewood Teachers Association against the Englewood Board of Education. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it did not appoint this teacher to the extracurricular position of intramural adviser. The Commission finds that the Board has the managerial prerogative to make extracurricular appointments.

P.E.R.C. NO. 88-141

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-22

ENGLEWOOD TEACHERS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Gutfleish & Davis, Esqs.  
(Suzanne Raymond, of counsel)

For the Respondent, Bucceri & Pincus, Esqs.  
(Louis P. Bucceri, of counsel; Gregory T. Syrek,  
on the brief)

DECISION AND ORDER

On October 27, 1986, the Englewood Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. It seeks a restraint of binding arbitration of a grievance filed by a physical education teacher represented by the Englewood Teachers Association ("Association"). The grievance alleges that the Board violated its collective negotiation agreement with the Association when it did not appoint this teacher to the extracurricular position of intramural advisor.

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

The Association is the majority representative of the Board's teachers and other professional employees. The parties entered a collective negotiations agreement covering the 1984-1985

and 1985-1986 school years. Its grievance procedure ends in binding arbitration of grievances involving the contract's meaning.

Barbara Faycik is a physical education teacher. Before the 1985-86 school year, she was head coach of the girl's volleyball team at the high school and intramural advisor in the Janice Dismas Middle School. She received a stipend for each position.

Faycik was reemployed as volleyball coach for the 1985-86 school year. But in October 1985, the high school principal and athletic director told Faycik that students and parents had complained about her gossiping with some team members about other team members. Faycik alleges she was asked to resign, but the athletic director asserts instead that Faycik abruptly walked out of the room and returned with her resignation. Faycik rescinded her resignation before the Board accepted it. While her coaching status was in doubt, she and an NJEA representative met with the acting superintendent of schools. The acting superintendent reinstated her effective October 24, 1985.

On October 28, 1985, Faycik received a letter from the acting assistant superintendent. The letter informed her that he had withdrawn his recommendation that she be appointed as intramural advisor. The acting superintendent did this rather than have the Board reject her appointment in open public session.

Faycik alleges that the middle school principal had recommended her to be intramural advisor, but the high school principal and athletic director, upset because she had met with the

superintendent, opposed her appointment. The athletic director asserts instead that she had recommended Faycik despite her alleged gossiping with high school players because she would be less likely to gossip with younger girls.

The Association filed a grievance asserting that the Board refused to appoint Faycik as intramural advisor because of anti-union animus and because she had complained about the attempt to remove her as volleyball coach. The grievance alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and certain contractual provisions including one requiring just cause for discipline. The grievance sought Faycik's immediate appointment and back pay and the removal from Faycik's personnel file of negative material related to the grievance.

The Board denied the grievance and the Association demanded arbitration. This petition ensued.<sup>1/</sup>

The Board contends that it had a managerial prerogative not to appoint Faycik to the extracurricular position and that even if the non-appointment was considered disciplinary, she had invoked an alternate statutory appeal procedure by petitioning the Commissioner of Education. The Association responds that the non-appointment was a disciplinary determination; that no alternate statutory appeal

---

<sup>1/</sup> In addition to her grievance, Faycik filed a petition with the Commissioner of Education asserting that her non-appointment was arbitrary. The Commissioner has dismissed this petition. He apparently was not asked to consider allegations of anti-union animus. Faycik v. Englewood Bd. of Ed., Comm. of Ed. #162-87 (6/19/87).

procedure exists since extracurricular positions are not tenurable, and that claims of anti-union animus may be arbitrated.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

Thus, we do not consider the contractual merits of this grievance or any defenses.

Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) and In re Wayne Tp., 220 N.J. Super. 340 (App. Div. 1987), compel us to restrain arbitration. In Teaneck, we recognized the general rule that appointments are non-negotiable, but found an exception for a claim that a teacher had been denied an appointment as an assistant basketball coach because of race discrimination. The Supreme Court reversed and ruled out any exceptions, stating:

[A]dding a discrimination claim does not change the reality that the arbitrator would be reviewing the managerial decision and the agency's exercise of its functional right -- not to discriminate -- but to choose among qualified candidates. [Id. at 17]

In Wayne, a deputy township clerk served three four-year terms, but was not reappointed for another term, allegedly because of political discrimination. We found that this non-reappointment was arbitrable as an alleged disciplinary discharge, but the Appellate Division read Teaneck to require reversal.

Faycik was not discharged from her position of volleyball coach. Instead she was simply not appointed as intramural advisor. Under Teaneck and Wayne, the issue of whether that non-appointment was motivated by student and parent complaints or by her grievances cannot be submitted to an arbitrator. Faycik has contested the educational soundness of the non-appointment before the Commissioner of Education and she had a right to contest unfair practice allegations before us. The facts of this particular case do not demonstrate that this non-appointment was in reality a method of discipline.

ORDER

The Englewood Board of Education's request for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson and Wenzler voted in favor of this decision. Commissioner Smith was opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
June 23, 1988  
ISSUED: June 24, 1988