

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL
DISTRICT OF PATERSON,

Petitioner,

-and-

Docket No. SN-2001-14

PATERSON PRINCIPALS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the State-Operated School District of Paterson for a restraint of binding arbitration of a grievance filed by the Paterson Principals Association. The grievance contests the placement of a principal on administrative leave. The Commission concludes that since the Association is not contesting the decision to transfer the principal to the early education program or seeking to undo that decision and given that the District's negotiability argument is limited to that question and the District does not argue that the administrative leave is not legally arbitrable, arbitration will not be restrained. The Commission's ruling, however, is without prejudice to the District's refiling its petition if the decision to transfer to the early childhood program becomes an issue in 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. 2001-47

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Appearances:

For the Petitioner, Schwartz, Simon, Edelstein, Celso & Kessler, LLP, attorneys (Nathaniel M. Davis, on the brief)

For the Respondent, Robert M. Schwartz, attorney, on the brief

DECISION

On October 2, 2000, the State-Operated School District of Paterson petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Paterson Principals Association. The grievance contests the placement of a principal on administrative leave.

The parties have filed briefs and exhibits. The District has submitted its superintendent's certification. These facts appear.

The District is an Abbott district as defined in N.J.A.C. 6A:24-1.2 and thus participates in Whole School Reform. Each Abbott district must establish a school management team to plan and implement ways to increase a school's effectiveness. N.J.A.C.

6A:24-2.1. The team consists of the building principal, teachers, school-level support staff, parents, and community members.

The Association represents the District's certified principals. The parties' collective negotiations agreement is effective from July 1, 1998 through June 30, 2002. The grievance procedure ends in binding arbitration.

Article IV is entitled Members' Rights. Section F provides:

The District and/or the State District Superintendent may only take formal action concerning a complaint against a member of the unit after the following:

1. The complaint must be in writing and a copy given to the member in question.
2. The member shall have five (5) calendar days to respond to the complaint.
3. This section shall not apply to a complaint which may result in the reduction of compensation or dismissal from the school system or to a complaint which an immediate response is appropriate, as is the case of a parental complaint.
4. No Principal shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause.

Article XIII is entitled Re-Assignments and Transfers.

Section A provides:

Any change in school or assignment of members of the unit shall be given as soon as possible to the personnel involved and to the Association. The member(s) and the Association shall be notified in writing of any contemplated transfers prior to August 1st, if known by the District. If a transferred or

re-assigned member desires a conference to discuss the contemplated transfer or re-assignment, such conference shall take place with the State District Superintendent of Schools or designee within five (5) days after such written request is submitted to the Superintendent. Adjustments in the five day advanced notification would have to be made if the State District Superintendent or his/her designee is not scheduled to be in the District at the time the meeting is desired. It is the understanding however, that five (5) days is the generally agreed upon meeting limit.

Mirva Rivera is a tenured principal. She began District employment as a teacher in 1977, became a vice-principal in 1990, and was promoted to principal at School No. 12 in August 1992.

In August 1996, Rivera was transferred to School No. 28. The then superintendent believed that a smaller school environment would help her grow as an administrator. The current superintendent states that while Rivera was at School No. 28, teachers and support staff complained that Rivera had reprimanded them in public and parents complained that Rivera had misbehaved. After a review of her evaluation and the number of complaints, the superintendent determined to transfer Rivera at the end of the 1997-98 school year to School No. 14.

The superintendent states that after transferring Rivera to School No. 14, he immediately began receiving complaints about her interactions with staff. Some teachers complained that Rivera

was threatening or humiliating them in various ways we will not detail here.^{1/}

The superintendent states that he instructed the assistant superintendent, Anna DeMolli, to address Rivera's staff relationships. On May 28, 1999, DeMolli wrote to Rivera commending her dedication, but pointing out examples of interpersonal problems. Rivera was given a 90-day improvement plan and was informed that "failure to make improvements in the areas needing development may lead to a recommendation of withholding of increment or other disciplinary sanctions."

Rivera's attorney responded on July 30, 1999, protesting the 90-day improvement plan and requesting that the District present any claims against Rivera to the attorney by August 13. The District responded that the 90-day improvement plan was appropriate based on its evaluation of Rivera's performance.

^{1/} The District has filed 55 exhibits, 21 of which are copies of complaints and a grievance while Rivera was at School No. 14. The Association asserts that we should not consider Exhibits 19, 21, 22, and 24-44 because they were not supplied earlier when the Association requested such documents and because Rivera was not given a chance to respond to them. The District asserts that these documents were inadvertently misfiled and discovered only recently. We do not consider the merits of the allegations in these documents; for purposes of this decision, we merely note that complaints about Rivera were received.

After receiving more complaints about Rivera, the superintendent met with the teachers and support staff on October 29, 1999. He was told that Rivera had publicly reprimanded staff, was difficult to communicate with, constantly made inappropriate comments, and threatened staff members.

On November 5, 1999, the superintendent sent the following memorandum to Rivera:

Based upon a recommendation by your Assistant Superintendent and Labor Relations Officer, I have determined to relieve you of your duties as Principal of School No. 14, effective 3:00 p.m. today. You are hereby placed on administrative leave until further notice.

This decision is based upon concerns regarding your ability to effectively demonstrate leadership skills as a building principal. The Assistant Superintendent and Labor Relations Officer have received numerous complaints by staff alleging poor interpersonal relations, and a negative school climate at School No. 14 during the pendency of your 90-day improvement period.

Please turn in all building keys and school property in your possession to your Assistant Superintendent today.

On November 16, 1999, the Association wrote to the District seeking documents concerning Rivera's reassignment. It alleged that no one had monitored the 90-day improvement plan and that Rivera had not been told that she was not meeting the plan's expectations. It asserted that Rivera had not received the advance notice of a transfer required by Article XIII. The Association also stated that the administrative leave amounted to a suspension with pay and that the District did not have the

authority to keep her on administrative leave. The Association demanded that Rivera be reinstated to her tenured position of principal.

On December 21, 1999, a meeting was held between District representatives and Rivera and her representatives. The reasons for Rivera's transfer were discussed and she was informed that she was being reassigned as a principal in the early childhood program. In that position, she would work with DeMolli and supervise early childhood centers, implement needs assessments, develop community-based programs and curriculum activities, and evaluate pre-school staff.

On December 23, 1999, the Association again wrote to the District. The Association requested documents as to Rivera's performance. The Association described its November 16 letter as a grievance and the December 21 meeting as the Board's response. The Association sought to move the matter to arbitration. It also asserted that Rivera was disciplined without just cause and that too should be considered part of the grievance.

On December 28, 1999, the District provided a set of documents to the Association and an accompanying letter. The letter stated:

In evaluating Ms. Rivera's past performance as a principal, the District has determined that at this time Ms. Rivera should be transferred. The District is seeking an amicable solution to this matter and hopes that it can be resolved without any further delay. As requested at our December 21, 1999 meeting, the District expects Ms. Rivera to return to work on January 10, 2000 in her new position.

Furthermore, the District does not consider any of the meetings regarding Ms. Rivera as part of the grievance procedure which is set forth in the contract. Any and all grievances on behalf of Ms. Rivera should be filed in accordance with the contractual procedures.

On January 5, 2000, the District sent Rivera a letter instructing her to return to work on January 10 in the position of principal in the early childhood program. The Association responded that Rivera would return to work in that position, but under protest and subject to pursuing contractual claims. For medical reasons, Rivera did not return to work until March 2000.

On March 30, 2000, the District's labor relations officer denied the Association's request for a grievance hearing as untimely. She asserted that the District did not consider the November 16, 1999 letter to be a grievance and that the December 23, 1999 letter was filed more than 30 days after Rivera was placed on administrative leave.

On April 3, 2000, the Association wrote to the District, asserting that the grievance was timely and requesting a level 2 hearing. On April 24, the District denied that request. On May 2, the Association demanded arbitration. This petition ensued. The parties have selected an arbitrator, but have held the arbitration in abeyance until this petition is decided.

The District asserts that we have the exclusive authority under N.J.S.A. 34:13A-27 to determine whether transfers are disciplinary and that the Association should have filed a contested transfer petition if it believed this transfer

was disciplinary. The District further asserts that Rivera's transfer was predominantly based on its prerogative to maintain a cooperative educational atmosphere and that even if the transfer were disciplinary, an arbitrator could not reinstate Rivera unless it was recommended by the school management team and approved by the superintendent as required under N.J.A.C. 6A:24-1.2.

The Association does not contest the District's right to transfer Rivera to the early childhood position. It asserts instead that the issue is whether the District had a sufficient basis for removing Rivera from School No. 14 and requiring her to take a forced leave of absence, and whether those actions were disciplinary and violated her contractual rights. It further raises questions concerning whether complaints against Rivera were filed, whether Rivera received copies, whether the complaints were placed in her file, whether the district considered complaints not placed in writing, whether a professional improvement plan was given to Rivera, and whether any such plan was supervised. The Association asserts that the regulations cited by the District did not become effective until July 1, 2000, nine months after the grievance was filed.

The District responds that Rivera's transfer is the only issue before the Commission. A point heading in the reply brief specifically states: "The Respondent's Argument Regarding Her Involuntary Leave is Irrelevant Since It is Not Being Addressed in the Scope Petition and the Matter is Moot." It adds that the

involuntary leave dispute is moot because Rivera has returned to work and was not denied compensation or benefits. It reiterates that Rivera's transfer from School No. 14 is not arbitrable and asserts that there can be no distinction between the removal and the transfer.

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 cannot consider the contractual merits of this grievance or any contractual defenses the District may have. We specifically decline to consider any questions about the timeliness of the grievance or demand for arbitration. We do note, however, that the instant petition was timely filed since an arbitration award has not been issued. Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983).

The parties' arguments bypass each other and are never joined on any issue. On one hand, the District asserts that its decision to transfer Rivera from her previous school to the early education program is not legally arbitrable and can only be

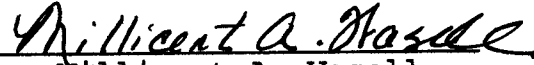
litigated through a contested transfer petition. The Association, however, does not dispute that assertion or seek to undo the transfer. On the other hand, the Association asserts that placing Rivera on an administrative leave is legally arbitrable as a disciplinary action, in effect a paid suspension; it also identifies several apparently procedural issues concerning notice of complaints and personnel actions. The District, however, does not argue that the administrative leave is not legally arbitrable or that the specific issues identified by the Association are not negotiable. It does argue that the dispute over the leave has become moot, but that question does not touch on negotiability and is outside our limited scope of negotiations jurisdiction. Ridgefield Park.

Given that the Association is not contesting the decision to transfer Rivera to the early education program or seeking to undo that decision and given that the District's negotiability argument is limited to that question, we will not restrain arbitration. This ruling, however, is without prejudice to the District's refiling its petition if the decision to transfer Rivera to the early childhood program becomes an issue in arbitration.

ORDER

The request of the State-Operated School District of Paterson for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: February 22, 2001
Trenton, New Jersey
ISSUED: February 23, 2001