

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-9

PARSIPPANY-TROY HILLS
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that the Board unjustly disciplined a teacher by not reappointing him to the position of department head. The Commission finds that the Board's assertion that the parties contractually agreed to exclude this type of disciplinary dispute from the negotiated grievance procedure is a contractual defense outside its jurisdiction and must be considered by an arbitrator.

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, Dillon, Bitar & Luther, attorneys
(Henry N. Luther, III, of counsel; Marie-Laurence Fabian
and Steven F. Ritardi, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Mary J. Hammer, of counsel)

DECISION AND ORDER

On August 2, 1994, the Parsippany-Troy Hills Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that the Board unjustly disciplined a teacher by not reappointing him to the position of department head.

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

The Association represents the Board's teachers, department heads, and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1993 until

June 30, 1995. Article II, entitled Negotiations Procedures, states, in part: "[t]his agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiations." Article XVIII, entitled Board Rights, recognizes the Board's power "to hire, promote, transfer, assign and retain employees and positions within the school district and suspend, demote, discharge, or take other disciplinary action against employees."

The contract's grievance procedure ends in binding arbitration of contractual disputes. However, the parties excluded certain matters from the grievance procedure. Among the matters excluded are "[a] complaint by a teacher occasioned by the lack of appointment to or lack of retention in any position for which tenure either is not possible or not required."

The position of department head is not covered by statutory tenure laws and does not require a separate certificate. Under the parties' contract, a department head receives a stipend in addition to his or her salary.

Robert Penny is a tenured social studies teacher. He teaches at the Brooklawn Middle School.

In 1981, Penny was appointed to the position of Social Studies Department Head in his school. He was reappointed department head every year for the next 12 years.

On November 2, 1992, Penny's supervisor sent him a memorandum entitled "Unprofessional Behavior." The memorandum

recounted a post-observation conference in which Penny had been allegedly uncooperative, arrogant, bizarre and belligerent.

Penny submitted a response. The response objected to the "inflammatory language" in the memorandum, denied that Penny had made several of the statements attributed to him, alleged that the supervisor had created a negative framework of questions at the conference, and alleged that the supervisor had provoked Penny.

Penny was not reappointed department head for the 1993-1994 school year. On July 2, 1993, the Association filed a grievance. The grievance alleged that Penny had been denied reappointment for disciplinary reasons and sought his reappointment. The grievance also alleged that the principal and Penny's new supervisor had decided not to reappoint him and had not "stated why Mr. Penny had become unable to perform the job as Social Studies Department Head."

Penny's principal denied the grievance. The Association appealed to the superintendent. It asserted that the reasons given by the principal stemmed from a conflict between Penny and his supervisor and were disciplinary rather than professional. The Association asked that Penny be reinstated as department head for a one-year probationary period so that he would have an opportunity for a fairer evaluation.

The superintendent met with Penny. He sustained the principal's denial of the grievance.

The Association appealed to the Board. The Board's Personnel Committee met with Penny and an Association representative. The Committee also denied the grievance.

On March 23, 1994, the Association demanded arbitration pursuant to N.J.S.A. 34:13A-29. It identified this dispute: "Board of Ed. improperly disciplined Bob Penny when it denied him his department head position...." It sought reinstatement and payment of the stipend for the 1993-1994 school year. This petition ensued. The parties have agreed to hold arbitration proceedings in abeyance until this petition is decided.^{1/}

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.

We thus cannot consider the grievance's contractual arbitrability or merits.

The Board does not dispute the Association's assertion that the non-reappointment was made for disciplinary reasons. It appears

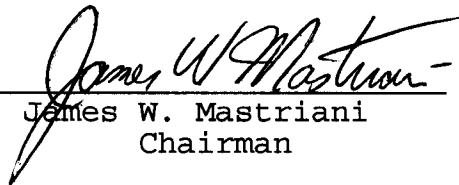
^{1/} The petitioner has requested oral argument. We deny that request.

to assert only that the parties contractually agreed to exclude this type of disciplinary dispute from the negotiated grievance procedures. This contractual defense is outside our jurisdiction and must be considered by an arbitrator. Ridgefield Park.^{2/}

ORDER

The request of the Parsippany-Troy Hills 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 and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: December 21, 1995
Trenton, New Jersey
ISSUED: December 21, 1995

^{2/} In light of this holding, we need not address the Board's contention that the department head position is also governed by N.J.S.A. 34:13A-23 and that the parties agreed to exclude non-retention in extracurricular assignments from the grievance procedure.