

P.E.R.C. NO. 87-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-82

SAYREVILLE SCHOOL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, restrains binding arbitration of a grievance filed by the Sayreville School Employees Association. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it failed to observe seniority when filling a vacant position. The Chairman finds, however, that the Board has a non-negotiable managerial prerogative to determine who is best suited to fill a vacancy.

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Appearances:

For the Petitioner, Hutt, Berkow & Jankowski, Esqs.
(Joseph J. Jankowski, of counsel)

For the Respondent, Oxfeld, Cohen & Blunda, Esqs.
(Arnold S. Cohen, of counsel)

DECISION AND ORDER

On May 2, 1986, the Sayreville Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Sayreville School Employees Association ("Association"). The grievance alleges that the Board violated its collective negotiations agreement with the Association when it did not observe seniority in filling a vacant position.

Both parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's bus drivers and classroom teacher aides. The Board and the Association have entered a collective negotiations agreement effective from July 1, 1984 through June 30, 1986. The agreement's grievance procedure ends in binding arbitration.

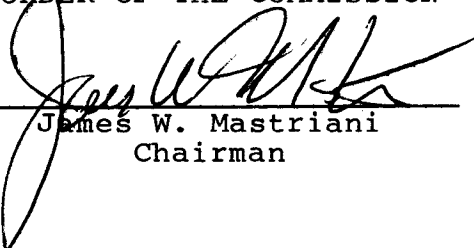
Sometime prior to January 21, 1986 the position of Special Education Teacher Aide became vacant. The Board posted the vacancy, accepted bids and interviewed candidates. On January 21, 1986 a substitute teacher with special education experience was hired. On January 23, 1986 the Association filed a grievance asserting that the Board's action violated provisions of the agreement defining seniority and requiring that a vacancy be awarded to the most senior employee submitting a bid. [Articles 16(A) and (C) and 17(C)] The Board denied the grievance and the Association sought arbitration. This petition ensued.

Acting pursuant to authority delegated to me by the full Commission, I restrain arbitration. Existing case law provides that the Board has a non-negotiable managerial prerogative to determine qualifications for a vacancy. The Association concedes that the contract's procedural requirements (posting and bidding) were observed. See Bd. of Ed. Tp. of N. Bergen v. N. Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976). In this instance its determination is not subject to mandatory negotiations.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 19, 1987