

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY VOCATIONAL AND  
TECHNICAL SCHOOLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-32

SOMERSET COUNTY VOCATIONAL AND  
TECHNICAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Somerset County Vocational and Technical Schools Board of Education for a restraint of arbitration of a grievance filed by the Somerset County Vocational and Technical Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when, allegedly without just cause, it suspended a non-tenured teacher with pay for the rest of the 1994-95 school term and cancelled his reappointment offer or contract for the 1995-96 school term. Arbitration is restrained to the extent the grievance seeks reinstatement or payment of wages or benefits beyond the 1995-1996 school year. The request for a restraint is otherwise denied.

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, Bivona, Cohen, Kunzman, Coley, Yospin,  
Bernstein & DiFrancesco, attorneys (Judith A. Babinski, of  
counsel)

For the Respondent, Klausner & Hunter, attorneys (Stephen  
E. Klausner, of counsel)

DECISION AND ORDER

On September 28, 1995, the Somerset County Vocational and Technical Schools Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of arbitration of a grievance filed by the Somerset County Vocational and Technical Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when, allegedly without just cause, it suspended a non-tenured teacher with pay for the rest of the 1994-95 school term and cancelled his reappointment offer or contract for the 1995-96 school term.

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

The Association represents the Board's teachers, nurses, secretaries, maintenance employees and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1993 through June 30, 1994 and extended to cover the 1994-95 school year. The contract provides, in part, that "no teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage without just cause...." The grievance procedure ends in binding arbitration except in eight circumstances, including "a complaint of a non-tenured employee which arises by reason of his not being re-employed."

Thomas Esser was a non-tenured physical education teacher. His employment began with a contract for the 1992-93 school year and he received additional contracts for the 1993-94 and 1994-95 school years.

On April 24, 1995, the Board voted to issue Esser a contract for the 1995-96 school year. The next day, the superintendent confirmed the Board's action to Esser in a memorandum advising him of his salary step placement. The memorandum asked for Esser's dated signature as acceptance of employment for the 1995-96 school year. Esser signed, dated, and returned the memorandum.

On or about May 5, 1995, the Board learned of allegations of "conduct unbecoming a teacher" and began an investigation. On May 11, the Superintendent sent Esser a letter stating that at a May

15 meeting, the Board would discuss the "possible cancellation of your 1995-96 teaching reappointment" and an immediate suspension with pay for the remainder of the 1994-95 term. The letter also advised Esser of his right to attend the meeting with a representative and address the Board.

On May 15, 1995, the Board cancelled "the reappointment offer" for the 1995-96 school year. It also immediately suspended Esser with pay for the rest of the 1994-95 school year.

On May 16, 1995, Esser filed a grievance. The Board denied the grievance and the Association demanded arbitration. The demand seeks reinstatement and restoration of wages and benefits. This petition ensued.

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 arbitrability or merits of this grievance or any contractual defenses the employer may have.

We specifically do not consider the Board's argument that the demand for arbitration was untimely.

In Hunterdon Central Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-92, 18 NJPER 134 (¶23064 1992), we considered the legal arbitrability of a dispute similar to this one. There, a non-tenured teacher taught three years and received a reappointment for a fourth year. Before the fourth year began, however, a parent complained about the teacher and the school board terminated the employment contract for the next school year. An arbitrator sustained a grievance alleging that the teacher's employment contract had been terminated without just cause and ordered the teacher reinstated with full back pay. We held that the dispute over the termination of the employment contract was legally arbitrable and that an arbitrator could award back pay for the term of that contract, but that an arbitrator could not order reinstatement since that would have the effect of conferring tenure and could not order back pay beyond the period covered by the terminated employment contract. The Appellate Division confirmed the arbitration award as modified by our decision. App. Div. Dkt. No. A-4921-91T3.

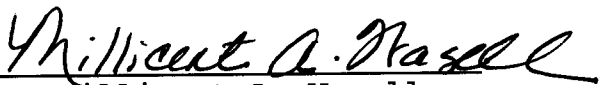
Hunterdon Central governs this case. The Association acknowledges that under Hunterdon, an arbitrator cannot order Esser reinstated or paid beyond the 1995-96 school year so we will restrain arbitration to the extent the grievance seeks such relief.

But under Hunterdon, the parties may legally arbitrate a claim that the Board did not have just cause to terminate the alleged employment contract for the 1995-96 school year and an arbitrator can legally award payment of lost monies and benefits for that year.

ORDER

The request of the Somerset County Vocational and Technical Schools Board of Education for a restraint of arbitration is granted to the extent that the grievance seeks reinstatement or payment of wages or benefits beyond the 1995-1996 school year. The request is otherwise denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Acting Chair

Acting Chair Wasell, 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: October 31, 1996  
Trenton, New Jersey  
ISSUED: November 1, 1996