

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST WINDSOR-PLAINSBORO REGIONAL  
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-42

WEST WINDSOR-PLAINSBORO SERVICE  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the West Windsor-Plainsboro Regional School District Board of Education for a restraint of binding arbitration of a grievance filed by the West Windsor-Plainsboro Service Association. The grievance alleges that the Board violated the seniority article in the parties' collective negotiations agreement when it credited a secretary for time previously worked in a non-unit position and identified for layoff another secretary with more seniority in a negotiations unit position. The Commission concludes that school boards and majority representatives may negotiate seniority provisions for secretaries, but that a negotiated seniority provision cannot conflict with the tenure laws by subordinating the rights of tenured employees to the interests of non-tenured employees.

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. 2004-85

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Appearances:

For the Petitioner, Parker, McCay & Criscuolo, P.A.,  
attorneys (Paul C. Kalac, on the brief)

For the Respondent, Klausner & Hunter, attorneys  
(Stephen B. Hunter, on the brief)

DECISION

On February 9, 2004, the West Windsor-Plainsboro Regional School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the West Windsor-Plainsboro Service Association. The grievance alleges that the Board violated the seniority article in the parties' collective negotiations agreement when it credited a secretary for time previously worked in a non-unit position and identified for layoff another secretary with more seniority in a negotiations unit position.

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

The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2003. Pursuant to the Recognition Clause, the Association represents a negotiations unit including 12-month secretaries, 10-month secretaries, and secretaries to administrators and instructional assistants. But the Recognition Clause excludes the secretaries to the Superintendent, the Assistant Secretary and the Board Secretary/Business Administrator. The grievance procedure ends in binding arbitration.

In December 1999, the Board hired Samantha Vasil as a confidential secretary to the Business Administrator. She remained in that position until March 2002. She was then transferred to the position of secretary to the principal of the Village School. Unlike her previous one, that position is in the Association's negotiations unit. On December 2002, Vasil acquired tenure in the district pursuant to N.J.S.A. 18A-17-2.

In the spring of 2003, the Board announced it would eliminate 11.5 full-time equivalent secretarial positions in the negotiations unit, effective July 1, 2003. The Board determined which secretaries to lay off based on their comparative district-wide seniority as secretaries. Vasil was not one of the secretaries to be laid off. Ultimately eight secretaries were

laid off, all of whom were non-tenured. Vasil's non-tenured successor as secretary to the Business Administrator was not laid off.

On April 11, 2003, the Association filed a level II grievance. It asserted that the Board violated Article XIII, entitled Seniority, when it did not include Vasil on the list of negotiations unit secretaries with the least seniority. The Association asserts that seniority under Article XIII depends on the secretary's time in a negotiations unit position and cannot include time in a non-unit position.

Article XIII contains these provisions pertinent to this dispute. Section 13:1 provides:

Unit Members shall accrue seniority beginning on the date of their appointment. Employees shall accrue seniority in the classification(s) that they hold or have held. . . .

Section 13:1.1 provides:

In the event of a reduction in force (RIF), employees shall be rified in the inverse order of seniority within each classification of employee.

Section 13:1.2 provides:

Classifications for the purposes of RIF for employees hired prior to February 11, 1997 shall be:

- \*                    \*                    \*
- b.    Secretary (10 month, 12 month, Secretary  
       to Administrator)
- \*                    \*                    \*

Classifications for purposes of RIF for employees hired after February 11, 1997 shall be:

- \*                   \*                   \*
- b. Secretaries
- \*                   \*                   \*

On May 19, 2003, the Assistant Superintendent for Finance denied the grievance. He wrote, in part:

Ms. Vasil has been continuously employed by the Board of Education since December 1999 as a secretary and will have over three years and six months seniority as a secretary as of June 30, 2003. Accordingly, she has greater seniority than those secretaries who are subject to the reduction in force and there is no basis to revise the seniority list.

In addition, Ms. Vasil earned tenure in December 2002 while serving in her current position, and therefore, has a superior right to continued employment than any nontenured secretary. Since all of the secretaries subject to the reduction in force are nontenured, the school district is abiding by the law in recognizing Ms. Vasil's tenure entitlement to her position.

The Superintendent and the Board denied the grievance for the reasons given by the Assistant Superintendent. The Association then demanded arbitration and 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 merits of this grievance or any contractual defenses the Board may have.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a dispute is not mandatorily negotiable and may not be submitted to binding arbitration if a statute or regulation preempts the employer's ability to grant the employment condition sought. A statute or regulation will be preemptive if it expressly, specifically, and comprehensively fixes an employment condition and thereby eliminates the employer's discretion to vary that condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). We hold that the tenure laws preempt arbitration since upholding the grievance would subordinate the rights of a tenured employee to the claims of non-tenured employees with respect to reductions in force.

N.J.S.A. 18A:17-2 grants tenure to school board secretaries who have worked for specified periods of time. A tenured secretary "shall hold his [or her] office, position or employment under tenure during good behavior and efficiency and shall not be dismissed or suspended or reduced in compensation, except for neglect, misbehavior, or other offense. . . ."

While no statute expressly says so, this tenure law does not protect secretaries against reductions in force for good faith reasons. Compare N.J.S.A. 18A:17-3 and N.J.S.A. 18A:28-9 (respectively permitting layoffs of janitors and teaching staff members). Nor does any statute specify the seniority rights and procedures that apply to a reduction in a secretarial force. Contrast N.J.S.A. 18A:17-4 and N.J.S.A. 18A:29-10 (respectively requiring that layoffs of janitors and teaching staff members be determined by inverse seniority). Absent a statute specifying secretarial seniority, we have held that a school board and a majority representative may negotiate seniority provisions for secretaries. Cf. Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984). See generally State Supervisory at 84 (if not preempted, seniority as it relates to layoffs and bumping is negotiable).

However, any negotiated seniority provision cannot conflict with the tenure laws by subordinating the rights and status of tenured employees to the interests of non-tenured employees. Sherrill v. Cinnaminson Tp. Bd. of Ed., 96 N.J.A.R.2d EDU 727 (Comm. of Ed. 1994), aff'd 96 N.J.A.R.2d EDU 731 (State Bd. of Ed. 1995); Mackey v. Ridgelyfield Bor. Bd. of Ed., 1983 S.L.D. 96 (Comm. of Ed. 1983); Sheridan v. Ridgelyfield Park Tp. Bd. of Ed., 1976 S.L.D. 995 (Comm. of Ed. 1976). See generally Spiewak v.

Rutherford Bd. of Ed., 90 N.J. 63 (1982) (application of teacher tenure laws cannot be bargained away).

Under this case law, the parties' seniority article could not be applied to result in the retention of a non-tenured secretary and the dismissal of a tenured secretary like Vasil who had the skills and qualifications needed for the position. Consistent with Keansburg and Sheridan, the parties may still negotiate the order of seniority for tenured secretaries as a class and the order of seniority for non-tenured secretaries as a class. See also Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987) (holding negotiable provision that non-tenured support staff shall be laid off before tenured support staff). But they cannot agree to diminish the rights of tenured secretaries vis-a-vis non-tenured secretaries when reductions in force are made.

We appreciate the Association's argument that Vasil would not have been dismissed because she could have exercised bumping rights to displace her non-tenured successor as Secretary to the Business Administrator. But the parties may not negotiate a seniority system that effectively determines who will fill a non-unit confidential position.



ORDER

The request of the West Windsor-Plainsboro Regional School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L. Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Sandman and Watkins voted in favor of this decision. None opposed. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present.

DATED: June 29, 2004  
Trenton, New Jersey  
ISSUED: June 29, 2004