

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY INSTITUTE  
OF TECHNOLOGY,

Petitioner,

-and-

Docket No. SN-85-21

NEWARK COLLEGE OF ENGINEERING  
PROFESSIONAL STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance the Newark College of Engineering Professional Staff Association filed against the New Jersey Institute of Technology. The grievance challenged the instructions NJIT's president gave an Advisory Committee charged with reviewing and making recommendations on whether two assistant professors should be promoted to full professorships. The Commission found that res judicata barred relitigation of this dispute since it had already declared the same dispute non-arbitrable in NJIT, P.E.R.C. No. 82-13, 7 NJPER 461 (¶12203 1981).

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Appearances:

For the Petitioner, DeMaria, Ellis & Hunt, Esqs.  
(Dennis J. Alessi, of Counsel)

For the Respondent, Sterns, Herbert & Weinroth, P.C.  
(Michael J. Herbert, of Counsel)

DECISION AND ORDER

On October 15, 1984, New Jersey Institute of Technology ("NJIT") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. NJIT seeks a restraint of binding arbitration of a grievance that the Newark College of Engineering Professional Staff Association ("PSA") has filed against it. The grievance challenges the instructions NJIT's president gave an Advisory Committee charged with reviewing and making recommendations on whether two assistant professors should be promoted to full professorships.

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

PSA is the majority representative of NJIT's full-time faculty and certain administrative staff. NJIT and PSA entered a

collective negotiations agreement effective from July 1, 1981 through June 30, 1983. That agreement contains a grievance procedure culminating in binding arbitration.

In 1980 and 1981, respectively, assistant professors Dr. Ronald Gautreau and Dr. William Savin received negative decisions from the Physics Department Promotions and Tenure Committee on their hoped-for appointments to full professorships. Both professors filed grievances claiming that the Committee had not fairly and impartially evaluated them. NJIT's president (through a designee in one case) ruled in their favor.

Instead of remanding and having the departmental committee reconsider its initial decision, NJIT's president established a special Advisory Committee to review the records of Dr. Savin and Dr. Gautreau and to recommend whether they should be promoted.

On September 29, 1981, PSA filed a grievance challenging "...the arbitrary and capricious manner in which [the president] gave instructions to [the Advisory Committee]."

On November 18, 1981, NJIT's Executive Director for Employee Relations denied the grievance. He asserted that the grievance involved a non-negotiable subject; that the president's instructions were not arbitrary, capricious or contractually illegal; and that the grievance was untimely. On December 7, 1981, the president affirmed this ruling.

On July 2, 1984, PSA filed a demand for binding arbitration. The demand states that the grievance challenges the manner in which the president instructed the Advisory Committee and asserts that the instructions varied from past practice and the staff handbook.

NJIT contends that under the doctrine of res judicata, the Commission must restrain arbitration of this grievance because the Commission had found the same dispute non-arbitrable in New Jersey Institute of Technology, P.E.R.C. No. 82-13, 7 NJPER 461 (¶12203 1981) ("NJIT I"). PSA asserts that res judicata does not apply since the previous dispute dealt only with the formation of the special Advisory Committee and NJIT's right to set promotional criteria, not with the application of these criteria or promotional procedures.<sup>1/</sup>

We have reviewed NJIT I and the record in this case. We believe the two cases are indistinguishable as to relevant issues and facts: the essential challenge in both cases is to the president's decision to form a new committee to consider the candidates' qualifications for criteria and in neither case could an arbitrator review the committee's application of these promotional criteria.<sup>2/</sup> Accordingly, we will restrain binding arbitration.

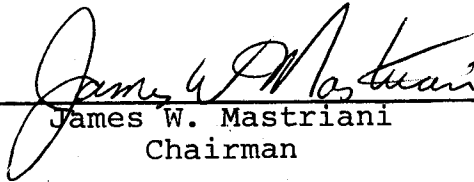
<sup>1/</sup> The parties have agreed that the Commission should issue a threshold determination on the res judicata issue and that further briefing on the merits will ensue if the Commission finds in PSA's favor.

<sup>2/</sup> We note that the Advisory Committee has in fact recommended the promotion of both candidates.

ORDER

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

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker and Wenzler voted in favor of this decision. Commissioner Graves opposed. Commissioner Suskin was not present at the time of the vote.

DATED: Trenton, New Jersey  
December 19, 1984  
ISSUED: December 21, 1984