

P.E.R.C. NO. 83-156

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-26

CITY ASSOCIATION OF SUPERVISORS  
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance the City Association of Supervisors and Administrators had filed against the Newark Board of Education. The Commission found that the gravamen of the dispute was the Association's claim that an employer had a constitutional, although not a contractual, right to insist upon tape-recording a conference concerning his dismissal. The Commission held that in the absence of a question of contractual interpretation or negotiability, the Association's constitutional claim should be addressed to the courts.

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Appearances:

For the Petitioner, Louis C. Rosen, Esquire  
General Counsel

For the Respondent, Barry A. Aisenstock, Esquire

DECISION AND ORDER

On September 28, 1982, the Newark Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition sought a permanent restraint of binding arbitration of a grievance the City Association of Supervisors and Administrators ("Association") sought to submit to binding arbitration. The grievance essentially alleges that the Board violated its collective negotiations agreement when it dismissed Ruben Gonzalez from his position as Director of Bilingual Education without affording Gonzalez an informal conference and an opportunity to respond.

Both the Board and the Association have filed letter memoranda and the Board has also filed a reply memorandum. The following facts appear.

The Association represents a unit of supervisors and administrators employed by the Board. The Board and the Association negotiated a contract effective from July 1, 1980 to June 30, 1982. Article III, Section C provides:

No CASA Personnel shall be either suspended or discharged except in strict compliance with Title 18A of the Statutes of the State of New Jersey.

No non-tenured Personnel shall be removed or dismissed from his or her position involuntarily during the period of his or her appointment to said position unless an informal conference has been held between the Personnel and his representative and with the appropriate administrator. The Personnel shall be apprised in writing five (5) days before the conference of the reasons for his or her involuntary removal or dismissal from the position and shall be given an opportunity to respond at the conference. Both the Personnel and his or her representative shall be granted administrative leave at full pay to attend this conference.

The contractual grievance procedure culminates in binding arbitration.

Gonzalez was Director of Bilingual Education for the Board. On or about December 22, 1981, the Board's Executive Superintendent dismissed him from this position.

The Association filed a grievance in which it alleged that the Board violated Article III, Section C, N.J.S.A. 18A:25-1, 25-6, and 27-9, and Board policy and regulations when it dismissed Gonzalez without giving him due process. The grievance alleged that instead Gonzalez had received only a telephone call informing him of his discharge and a subsequent letter of termination. The grievance asked that Gonzalez be reinstated or afforded due process.

On January 13, 1982, Gonzalez and his personal attorney met with the Executive Superintendent and certain other representatives of the Board for the purpose of having the informal conference which Article III, Section C contemplated. Gonzalez insisted that the meeting be tape-recorded. When the Board representatives refused, Gonzalez and his representative left the meeting. Gonzalez's termination was not discussed.

On January 14, 1982, a Board Hearing Officer conducted a hearing on the grievance. He concluded that the Executive Superintendent's letter to Gonzalez specifically explained the reasons for his termination and that the Board afforded Gonzalez an informal conference on January 13, 1982 which Gonzalez himself terminated.

On March 18, 1982, the Board's Personnel Review Committee affirmed the denial of the grievance. It concluded that Gonzalez had waived his rights to contractual due process by leaving the January 13, 1982 conference.

The Association then filed its demand for binding arbitration. The instant petition followed.<sup>1/</sup>

Under the circumstances of this case, we hold the instant dispute is not arbitrable. The gravamen of this dispute

<sup>1/</sup> The Board also applied for a restraint of arbitration pending the determination of this petition. On September 30, 1982, Commission designee Edmund G. Gerber granted the requested restraint. I.R. No. 83-7, 8 NJPER 595 (¶13278 1982).

concerns Gonzalez's insistence that the January 13, 1982 conference be tape-recorded: without this insistence, it is clear that the scheduled informal conference would have gone forward, thus mooted any claim that the Board violated its agreement by failing to hold a conference. As the Association states, however, the parties' collective negotiations agreement does not require that informal conferences be tape-recorded, and we believe that established labor relations law does not permit one party to impose such a precondition on the processing of grievances. See, Morton-Norwich Products, Inc., 228 NLRB No. 127, 94 LRRM 1696 (1977) (union violates federal Labor/Management Relations Act when it insists upon tape-recording grievance proceedings in absence of contractual provision or past practice allowing tape-recording); In re City of Reading, 12 PPER 280 (¶12182 1981) (Pa. PERB holds that employer cannot insist upon tape-recording grievance sessions). Cf. Bartlett-Collins Co., 237 NLRB 770, 99 LRRM 1034 (1978), aff'd 639 F.2d 652, 106 LRRM 2272 (10th Cir. 1981) (tape-recording negotiations session is not mandatorily negotiable subject). Thus, it appears that what is really in dispute is not a question of contractual interpretation or negotiability, but the Association's claim that Gonzalez had a constitutional (although not a contractual right) to insist upon tape-recording the conference.<sup>2/</sup> That question should be addressed

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<sup>2/</sup> We specifically refrain from considering the negotiability of Article III, Section C given the Association's position that it does not confer the central right -- tape-recording -- the Association now claims.

to the courts, not to the arbitrator or this Commission. Accordingly, we will restrain binding arbitration of this dispute.

ORDER

The request of the Newark Board of Education 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, Hartnett and Suskin voted in favor of this decision. Commissioners Graves and Hipp voted against the decision. Commissioner Newbaker abstained.

DATED: Trenton, New Jersey  
June 1, 1983  
ISSUED: June 2, 1983