

P.E.R.C. NO. 92-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-6

EDISON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Edison Township Education Association against the Edison Township Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it suspended a teacher with pay for five days. The Commission finds that there is an alternate statutory appeal procedure for contesting the paid suspension.

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Appearances:

For the Petitioner, Borrus, Goldin, Foley, Vignuolo, Hyman
& Stahl, attorneys (James F. Clarkin III, of counsel)

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

DECISION AND ORDER

On July 29, 1991, the Edison Township Board of Education petitioned for a scope of negotiations determination. It seeks a restraint of binding arbitration of a grievance filed by the Edison Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it suspended a teacher with pay for five days.

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

The Association represents the Board's non-supervisory employees, including teachers and audio-visual coordinators. The parties entered into a collective negotiations agreement effective

from July 1, 1990 to June 30, 1993. The negotiated grievance procedure ends in binding arbitration.

George Asprocolas is a tenured teacher - audio/visual coordinator. On January 14, 1991, the Board suspended him with pay for five days, effective immediately. The Board alleged that Asprocolas had used a Board postage meter for his personal business without authorization.

Pursuant to N.J.S.A. 18A:6-11, the process for bringing tenure charges against Asprocolas was initiated. On January 23, 1991, tenure charges and a statement of evidence were filed with the Board Secretary and provided to Asprocolas so he could respond.

On March 8, 1991, the Association filed a grievance asserting that the paid suspension was a reprimand without just cause and that this reprimand violated the contract's Recognition and Just Cause provisions. The Association demanded that the suspension be rescinded and all related reprimands be expunged.

On March 11, 1991, the Board adopted a resolution of findings and conclusions. It found probable cause to credit the evidence against Asprocolas and concluded that the evidence warranted his dismissal or a reduction in salary. See N.J.S.A. 18A:6-11. It served its resolution upon the Commissioner of Education. Asprocolas filed an Answer. The tenure case is pending before the Office of Administrative Law.

On June 27, 1991, the Association demanded binding arbitration of the grievance contesting the paid suspension. This petition ensued.

Under N.J.S.A. 34:13A-5.3, a public employer may agree to submit a disciplinary dispute to binding arbitration if the disciplined employee has no alternate statutory appeal procedure. See, e.g., CWA v. P.E.R.C., 193 N.J. Super. 658 (App. Div. 1984), certif. den. 99 N.J. 190 (1984); E. Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-88T6 (3/19/85), certif. den. 101 N.J. 280 (1985).

N.J.S.A. 18A:6-10 provides:

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state,

* * *

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeding upon as in this subarticle provided.

This statute provides an alternate appeal procedure for the tenure charges by which the Board is seeking Asprocolas' dismissal or a reduction in his compensation.


The Association argues that although the tenure charges may not be submitted to binding arbitration, the paid suspension which preceded the charges may be submitted since reprimands are legally

arbitrable. See, e.g., Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87). Had the tenure charges not been filed, the paid suspension would be a legally arbitrable dispute. But given those charges, we will restrain arbitration at this juncture because there is an alternate statutory appeal procedure. See City of Jersey City, P.E.R.C. No. 88-33, 13 NJPER 764 (¶18290 1987). The Commissioner of Education will review all the facts which led to the suspension and tenure charges and will determine what penalty, if any, is appropriate. In considering whether to dismiss the tenure charges, the Commissioner, we believe, will consider the propriety of the paid suspension.^{1/}

ORDER

The request of the Edison Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: September 30, 1991
Trenton, New Jersey
ISSUED: October 1, 1991

^{1/} Should the Commissioner not consider the paid suspension, the Association may petition to vacate this restraint.