

P.E.R.C. NO. 2003-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-22

CINNAMINSON SUPERVISORS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Cinnaminson Township Board of Education for a restraint of advisory arbitration of a grievance filed by the Cinnaminson Supervisors' Association. The grievance contends the non-renewal of a teacher's contract as department chairperson. The Commission will not restrain advisory arbitration of grievances. Whether the parties have agreed to advisory arbitration of this type of dispute is an issue of contractual arbitrability outside the Commission's jurisdiction.

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, Parker, McCay & Criscuolo, P.A.,
attorneys (James F. Schwerin, on the brief)

For the Respondent, New Jersey Education Association
(Steven Swetsky, NJEA Field Representative, on the brief)

DECISION

On October 9, 2002, the Cinnaminson Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Cinnaminson Supervisors' Association. The grievance contests the non-renewal of a teacher's contract as department chairperson.

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

The Association represents supervisory employees, including department chairpersons. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1999 through June 30, 2002. The grievance procedure provides, in part:

Level Four

- a. Grievances reaching Level Four will be of two (2) types only.

Type One - Alleged violation, misinterpretation or misapplication of the terms of this Agreement.

Type Two - Alleged misinterpretation or misapplication of Board policy or administrative decision involving the interpretation of Board policy.
- b. Type One grievances shall be submitted to the American Arbitration Association (AAA). The recommendation for settlement made by the arbitrator will be binding upon both parties.
- c. Type Two grievance will follow the same procedure as Type One, except the recommendations resulting from arbitration will be non-binding, although both the Board and Association agree that they will give consideration to any recommendation for settlement.

The Fair Dismissal Procedure provides, in part, that the failure to rehire a non-tenured teacher is "not subject to grievance."

Jacqueline Glenz is a tenured teaching staff member. During the 2000-2001 and 2001-2002 school years, she held the position of Language Arts Literacy Department Chairperson.

On March 15, 2002, the assistant superintendent notified Glenz that she was recommending that the Board not reappoint her as department chairperson. On May 9, the superintendent notified Glenz of his decision not to recommend reappointment.

On May 15, 2002, the Board reappointed Glenz as a teacher for the 2002-2003 school year, but did not reappoint her as department chairperson. On June 18, Glenz appeared before the

Board to discuss the non-reappointment. On June 20, the Board notified Glenz that they had accepted the superintendent's recommendation not to renew her department chairperson contract.

On July 10, 2002, Glenz filed a grievance. The grievance was denied at the superintendent and Board levels. On August 15, the Association demanded arbitration asserting that the non-renewal was a loss of professional advantage without just cause. This petition ensued.

The Board states that it eliminated the department chairperson position in favor of creating a "lead teacher" position, a title recognized in the parties' contract. The Board argues that the contract provides that failure to rehire a non-tenured teacher cannot be the subject of a grievance and that the non-renewal of a professional employee is not grievable. The Board states that there is no basis to differentiate non-tenured supervisors from non-tenured teachers.

The Association argues that under the parties' grievance procedure, this grievance may be submitted to advisory arbitration. It notes that it has not challenged the Board's right to reorganize, but does challenge the process and administrative decisions that led to the non-renewal. The Association therefore argues that since the parties' agreement provides for advisory arbitration, the grievance can proceed.

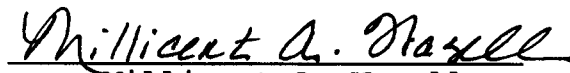
The Board responds since the contract provides for both binding and advisory arbitration, any arbitration should be conditioned on the Association's advising the American Arbitration Association that it seeks only advisory arbitration.

We will ordinarily dismiss a petition seeking a restraint of advisory arbitration without determining the negotiability of the underlying subject matter. Englewood Cliffs Bd. of Ed., P.E.R.C. No. 82-21, 7 NJPER 507 n. 5 (¶12225 1981); see also Eastampton Tp. Bd. of Ed., P.E.R.C. No. 2002-64, 28 NJPER 236 (¶33086 2002); Somerville Bd. of Ed., P.E.R.C. No. 96-66, 22 NJPER 135 (¶27066 1996); Bergen Community College, P.E.R.C. No. 92-27, 17 NJPER 429 (¶22207 1991); South Hackensack Bd. of Ed., P.E.R.C. No. 81-118, 7 NJPER 234 (¶12104 1981), aff'd NJPER Supp.2d 136 (¶118 App. Div. 1983). Our Supreme Court has held that even disputes involving non-negotiable personnel actions may be submitted to advisory arbitration. See Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9, 19-20 (1983); Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 325-326 (1979). The Association seeks only advisory arbitration of this grievance and we therefore decline to issue a restraint. Somerville.

ORDER

The request of the Cinnaminson Township Board of Education for a restraint of advisory arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: December 19, 2002
Trenton, New Jersey
ISSUED: December 20, 2002

