

P.E.R.C. NO. 92-126

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-85

PASCACK VALLEY REGIONAL  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Pascack Valley Regional High School District Board of Education for a restraint of binding arbitration of a grievance filed by the Pascack Valley Regional Education Association. The grievance contests the Board's decision not to hire a part-time business education teacher as a part-time substance abuse counselor. The Commission determines that the Board has a managerial prerogative to select the applicant it deems best qualified to be substance abuse counselor.

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Appearances:

For the Petitioner, Fogarty & Hara, attorneys  
(Rodney T. Hara, of counsel)

For the Respondent, Alfred F. Maurice, attorney

DECISION AND ORDER

On March 11, 1992, the Pascack Valley Regional High 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 a teacher represented by the Pascack Valley Regional Education Association. The grievance contests the Board's decision not to hire a part-time business education teacher as a part-time substance abuse counselor.

The Board has filed exhibits and a brief.<sup>1/</sup> These facts appear.

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<sup>1/</sup> The Association's brief was filed a month late without cause. We do not consider it.

The Association represents the Board's teachers and certain other personnel. The parties entered into a collective negotiations agreement covering the 1990-93 school years. The grievance procedure ends in binding arbitration.

Lois Jasper is a tenured business education teacher. During the 1990-91 school year she held a full-time position. However, as a result of declining enrollment, Jasper's position was reduced and she was hired as a two-fifths business education teacher for the next school year.

On June 3, 1991, Jasper applied for the three-fifths position of substance abuse counselor. The director of student personnel services interviewed her and other applicants. The position was offered to a non-tenured teaching staff member. According to the Board, the director determined that the applicant was more qualified than Jasper.

On October 14, 1991, Jasper filed a grievance. The grievance asserted that she was entitled to the position of substance abuse counselor.

On December 17, 1991, the Board denied the grievance. It asserted that the grievance was untimely, the hiring of teaching staff members is a managerial prerogative, and Jasper had no legal entitlement to the position she sought.

On January 13, 1992, the Association demanded binding arbitration. It identified the issue to be arbitrated as "3/5th substance abuse coordinator position claimed by Lois Jasper."

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

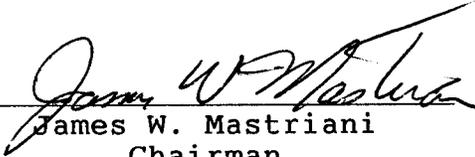
Thus, we do not consider the contractual merits of the grievance or any defenses the Board may have.

We agree with the Board that it had a managerial prerogative to select the applicant it deemed best qualified to be substance abuse counselor. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); North Bergen Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97, 103-104 (App. Div. 1976); Middletown Tp. Bd. of Ed., P.E.R.C. No. 89-40, 15 NJPER 49 (¶20017 1988). We therefore restrain arbitration over this grievance contesting the Board's decision to hire someone besides Jasper. To the extent Jasper claims she is entitled to the position under the school laws on tenure and seniority, she must petition the Commissioner of Education for redress.

ORDER

The request of the Pascack Valley Regional High School District 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: June 25, 1992  
Trenton, New Jersey  
ISSUED: June 26, 1992