

P.E.R.C. NO. 93-61

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERNARDSVILLE BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-21

BERNARDSVILLE EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Bernardsville Education Association against the Bernardsville Board of Education. The grievance contests a teacher's involuntary transfer. The Commission finds that decisions to transfer are not mandatorily negotiable. The assertion that the transfer was a form of retaliation for Association activity must be litigated through the Commission's unfair practice processes.

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Appearances:

For the Petitioner, Schwartz, Simon & Edelstein, attorneys  
(Nicholas Celso, III, of counsel; Andrew B. Brown, on the  
brief)

For the Respondent, John A. Thornton, Jr., New Jersey  
Education Association Representative

DECISION AND ORDER

On September 1, 1992, the Bernardsville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bernardsville Education Association. The grievance contests a teacher's involuntary transfer.

The parties have filed exhibits and briefs.<sup>1/</sup> These facts appear.

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<sup>1/</sup> We accept the Association's letter brief given its representative's certification that he had not received the Board's brief before being notified that his brief was late.

The Association represents the Board's certified personnel, co-curricular personnel, and support staff. The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1994. The grievance procedure ends in binding arbitration of contractual disputes.

Iver Kennedy is an English teacher. On May 15, 1992, the superintendent wrote Kennedy a memorandum informing him that he was being transferred from Bernards High School to Bernardsville Middle School. The memorandum stated that the transfer was necessitated by attrition and cost containment and specified these bases for transferring Kennedy against his wishes:

1. Dr. Pollock has clearly stated he believes you will be an asset to his school and has made this a specific recommendation. Also, you were the only person to be included on both the lists from the principals although it should be noted you were not the high school recommendation.

2. Dr. Pollock, upon advice from his English teachers, based his recommendation on your knowledge in the writing process; your demonstrated record of being receptive to new ideas and innovation; your experience in ITIP and Cooperative Learning; your high expectations; the respect which you have earned from parents, students and colleagues; your ability to work well in team organizations and the addition of another male role model in a school where a large majority of staff are females.

3. You have had, upon my review of your teaching schedule since 1981, four years of some teaching experience with either the seventh or eighth grade.

The superintendent stated that he would honor Kennedy's desire to return to the high school should a future vacancy arise.

On June 10, 1982, the Association filed a grievance asserting that the involuntary transfer was motivated by Kennedy's Association activity and outspoken role as a negotiator and was therefore arbitrary and capricious. The grievance sought Kennedy's reinstatement in a high school position.

On July 21, 1992, the superintendent wrote a memorandum recording the Board's decision to deny the grievance. The memorandum stated that the Board had relied on the superintendent's recommendation and had acted consistently with its attrition policy.

On July 28, 1992, the Association demanded binding arbitration. It identified the grievance as "unjust involuntary transfer (Iver Kennedy)."<sup>2/</sup> This petition ensued.

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

Thus, we cannot consider the merits of the grievance.

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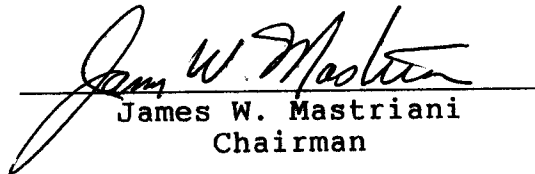
<sup>2/</sup> On the same day, the Association also filed an unfair practice charge alleging that the involuntary transfer violated N.J.S.A. 34:13A-5.4(a)(1) and (3). That charge is pending.

Decisions to transfer teachers are not mandatorily negotiable. Ridgefield Park. While N.J.S.A. 34:13A-27 prohibits a disciplinary transfer between work sites, the Association has not alleged that this transfer is disciplinary. Its assertion that the transfer was a form of retaliation against Kennedy for Association activity must be litigated through our unfair practice processes. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983).

ORDER

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993  
Trenton, New Jersey  
ISSUED: January 29, 1993