

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-83-22

ESSEX COUNTY COLLEGE
FACULTY ASSOCIATION,

Respondent.

SYNOPSIS

Acting pursuant to authority delegated to him by the full Commission, the Chairman of the Public Employment Relations Commission restrains binding arbitration of a grievance the Essex County College Faculty Association had filed against the Essex County College. The grievance had alleged that the College violated the collective negotiations agreement when it transferred a professor from a History teaching position to a counselling position and denied her request to be considered qualified to teach psychology.

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Appearances:

For the Petitioner, Schwartz & Pisano, Esqs.
(Lawrence S. Schwartz, Esq. and Nathanya G. Simon, Esq.,
of Counsel)

For the Respondent, Sterns, Herbert & Weinroth, P.C.
(Michael J. Herbert, Esq., of Counsel)

DECISION AND ORDER

On August 23, 1982, Essex County College ("College") 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 Essex County College Faculty Association ("Association") sought to submit to binding arbitration. The grievance alleges that the College violated its collective negotiations agreement when it transferred professor Eva Hodgson, a tenured faculty member, from the History department to a counselling position and denied her request to be considered qualified to teach psychology.

The College has submitted a brief, a copy of the contract, and documents concerning the history and processing of the grievance. The Association filed a letter brief, and the College replied with a letter brief.

The Association represents a unit of full-time teaching faculty employed by the College. The Association and College have entered a collective negotiations agreement effective from September 1, 1981 - August 31, 1984. The grievance procedure culminates in binding arbitration.

During the 1980-81 school year, the College, in response to declining enrollment, an anticipated budget deficit, and a shift in the types of courses students were taking, prepared a policy on reductions in force (RIFs). The policy focused on seniority in areas of qualification (i.e., discipline). It entrusted the Dean of Faculty with making a final determination concerning the qualifications and seniority of each faculty member within the particular disciplines. In April 1981, the Dean promulgated the final faculty eligibility and seniority list. He listed Eva Hodgson in the disciplines of African history and counselling. Twelve faculty members, not including Hodgson, were the subject of a reduction in force.

In the Fall of 1981, there were no courses in African History for Hodgson to teach. The College therefore laterally transferred her to her other area of qualifications -- counselling -- pursuant to the seniority list.

Hodgson discussed the transfer with members of the administration. A February 2, 1982 memorandum indicated that communications had broken down. The memorandum then stated that during the winter semester, Hodgson was to be assigned 15 contact hours of counselling duties and during the spring semester, she was to be assigned six contact hours of teaching duties. In addition,

pursuant to Hodgson's request, the Dean of Faculty would review her credentials to see if she was qualified for discipline eligibility in psychology.

On February 9, 1982, the Dean of Faculty submitted his report to the College president. He outlined the criteria for qualifications in a department. Included were such factors as the amount of graduate work -- a doctorate, a Master's degree, or 30 graduate credits -- in the discipline or significant classroom teaching (at least five years) in such courses at the College. Applying these criteria, the Dean of Faculty concluded that Hodgson was not qualified in psychology because she only had two graduate credits in psychology and had not taught psychology courses at least ten times. He recommended her placement on the lists for African history, Afro-American history, and counselling. On February 24, 1982, the president sent a copy of the report to Hodgson.

On March 12, 1982, Hodgson filed a grievance. She asserted that the decision regarding her qualifications and the application of the new RIF policy were arbitrary. She asked that her psychology qualification be recognized, her teaching assignment for the spring term be rescinded, and that she stop being harassed.

Recourse to the grievance procedure did not resolve the problem since the president and Board of Trustees affirmed the decision denying Hodgson qualification in psychology. Hodgson's request, however, to teach during the summer, rather than the spring, semester was accepted.

On July 27, 1982, the Association requested binding arbitration. It stated that "[t]he issue is the assignment of Dr. Eva Hodgson from the History Department to counselling and her qualifications to teach psychology."

The College contends that decisions to assign employees and determine their qualifications are non-arbitrable managerial prerogatives. It adds that only the Chancellor of Higher Education may review assignments and qualifications.

The Association responds that Hodgson's transfer from teaching history to counselling effectively removed her from tenure to non-tenure status and thus adversely affected her job security. In addition, the Association argues that Hodgson has lost the flexibility of a teaching schedule and now spends twice as many hours in an administrative capacity. Finally, the Association reiterates its claim that the determination concerning Hodgson's qualifications in psychology was arbitrary.

In its reply brief, the College asserts that Hodgson has not been removed from a tenured position and placed in a non-tenured position. It asserts that the counselling position is a faculty position equivalent in status, salary, and benefits to the other teaching positions, that Hodgson retains her tenure within the institution, and that tenure can only be removed pursuant to N.J.S.A. 18A:60-2 and N.J.S.A. 18A:6-17. The College concludes that this case does not present an issue of job security.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to resolve this matter. In accordance with well-settled case law, I must restrain arbitration.

In Ridgefield Park E. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), our Supreme Court held that a school board has a managerial prerogative to assign teachers in the manner it deems educationally best for the students. In the instant case, the College exercised this managerial prerogative when it decided that there were no courses in African history for Hodgson to teach and reassigned her to a counselling position. Although the reassignment had incidental effects on Hodgson's hours of employment, the dominant issue here is the College's right to determine which employees shall perform what functions. This reassignment was non-arbitrable. See also, Penns Grove-Carney's Point Ed. Ass'n v. Penns Grove-Carney's Point Bd. of Ed., P.E.R.C. No. 81-144, 7 NJPER 356 (¶12160 1981), mot. for recon. den. P.E.R.C. No. 82-44, 7 NJPER 616 (¶12275 1981), aff'd App. Div. No. A-695-81T1 (10/14/82); In re East Brunswick Bd. of Ed., P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981); In re Township of West Orange, P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982), mot. for recon. den., P.E.R.C. No. 83-30, 8 NJPER 560 (¶13258 1982), and In re Perth Amboy Bd. of Ed., P.E.R.C. No. 83-36, 8 NJPER 573 (¶13264 1982), mot. for recon. den., P.E.R.C. No. 83-63, 8 NJPER ____ (¶____ 1982).

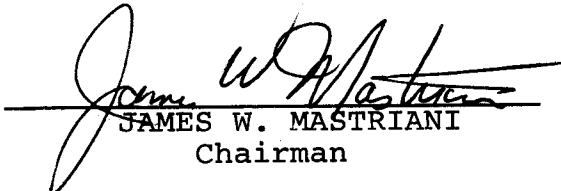
In In re Willingboro Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982), the Commission restrained binding arbitration of a grievance which would have required an arbitrator

to substitute his assessment of relative employee qualifications for that of a board of education. In the instant case, the College exercised its managerial prerogative to judge employee qualifications when its Dean of Faculty determined that Hodgson had not met the requirement for qualification in psychology. While this decision may decrease Hodgson's protection against a reduction in force, the dominant issue here is the College's right to determine which teachers are most qualified to teach what courses. This determination is non-negotiable. See also State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978) and Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Assoc., 91 N.J. 58 (1982).

ORDER

The request of Essex County College for a permanent restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



JAMES W. MASTRIANI
Chairman

DATED: Trenton, New Jersey
December 3, 1982