

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| JERSEY SHORE AREA SCHOOL DISTRICT, | : | |
| Plaintiff/Appellant, | : | 379 CD 2016 |
| | : | |
| vs. | : | CV-2015-0002774-EQ |
| | : | |
| FRANK GIRARDI, JR., AND JERSEY SHORE AREA | : | |
| EDUCATION ASSOCIATION, | : | |
| Defendants/Appellees | : | APPEAL / 1925(a) |

OPINION AND ORDER
Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Opinion and Order pursuant to Pa. R.A.P. 1925(a). This is an appeal by the Jersey Shore Area School District (“District”) from an Order denying injunctive relief on February 3, 2016. On March 28, 2016, the District filed its concise statement of the errors complaint of on appeal pursuant to Pa. R.A. P. 1925(b). The statement listed the following 13 issues on appeal.

1. Whether the court erred by concluding it lacked jurisdiction to determine whether the defendants contractually waived their right to grieve and/or arbitrate defendant Girardi’s termination?
2. Whether the court erred by concluding it lacked jurisdiction to enjoin the defendants from grieving and/or arbitrating Girardi’s termination?
3. Whether the Court erred when it failed to conclude that the defendants had made a clear, express, and unequivocal waiver of their contractual rights?
4. Whether the Court erred by concluding that there is a legitimate dispute as to whether arbitration has been waived?
5. Whether the Court erred by concluding that the waiver might be a violation of the Public School Code?
6. Whether the court erred by concluding that the absence of express language within the last chance agreement indicating who determines whether a violation of the Public School Code occurred is an additional issue requiring resolution by an arbitrator?
7. Whether the Court erred by concluding that the instant dispute was required be heard, in the first instance, by either an arbitrator or the PLRB?
8. Whether the court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving the six prerequisites for injunctive relief?
9. Whether the Court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving greater injury would occur from refusing to grant the injunction than from granting it?
10. Whether the Court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving that the injunction would return the parties to the status quo?

11. Whether the Court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving that the injunction would return the parties to the status quo?
12. Whether the court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving that it was likely to succeed on the merits of the underlying claims
13. Whether the court erred by denying plaintiff a preliminary injunction where plaintiff met its burden of proving that the injunction sought was reasonably suited to abate the offending activity.

The Court provided the reasons for this decision in a comprehensive opinion dated February 3, 2016.¹ The Court relies on that opinion. In light of the issues raised in the concise statement, the Court further clarifies the February 3, 2016 opinion as follows.

The Court concluded that an arbitrator – and not the trial court - in the first instance must determine whether or not a tenured public school teacher waived his right to grieve and arbitrate his termination from employment under the collective bargaining agreement, last chance agreement, Pennsylvania Public Employee Relations Act, 43 P.S. § 1101.903, and the Public School Code, 24 P.S. § 11-1133; 11-1121. This Court did not conclude that this matter must proceed to arbitration. This Court did not make any determination as to whether the employee waived his right to arbitration or that the arbitrator must make any additional determination other than whether the matter must be arbitrated or may proceed to Court.²

In making this determination, the Court concluded that the District failed to address three very significant distinctions between the present case and the case it relied upon, Mun. Emples. Org. of Penn Hills v. Municipality of Penn Hills, 876 A.2d 494, 499 (Pa. Cmwlth. 2005), appeal denied, 586 Pa. 731, 890 A.2d 1062 (Pa. 2005). In Penn Hills, the determination as to waiver was made by the Pennsylvania Labor Relations Board in the first instance, not by the Court. Second, Penn Hills did not involve the Public School Code. Third, the last chance agreement in

¹ The Opinion and Order was docketed on February 4, 2016.

² In ¶ 6 of the statement, the District contends the Court erred by imposing additional issues for review by an arbitrator. However, the Court concluded only that the initial determination of whether the matter must proceed to arbitration or the Courts must be determined by an arbitrator. What the arbitrator considers in making that determination is within the purview of the arbitrator.

Penn Hills differed from that in the present case by explicitly stating the employer would determine the threshold question as to what constituted conduct in violation of the agreement.

As to the District's request for preliminary injunction, the Court concluded that the District failed to present sufficient evidence that it was entitled to injunctive relief. There were no facts in dispute for purposes of the hearing. Notes of Testimony, injunction hearing held on December 3, 2015, (N.T.) at 4; 6:22-23. The only facts before the Court were those plead in the complaint.³ The Complaint does not provide sufficient facts for the Court to conclude that the six essential prerequisites to injunctive relief are met. Warehime v. Warehime, 860 A.2d 41, 46 (Pa. 2004). In particular, the complaint fails to aver sufficient facts for the Court to conclude that the District would not have an adequate remedy at law if it were required to get a determination as to waiver from an arbitrator in the first instance.

For the above reasons and for those set forth in this Court opinion dated February 4, 2016, this Court respectfully requests that its decision be affirmed.

BY THE COURT,

May 5, 2016
Date

Richard A. Gray, J.

cc: J. Davie Smith, Esq. & Austin White, Esq. – Counsel for Appellant
William A. Hebe, Esq. – Counsel for Appellee
SPENCER, GLEASON, HEBE & RAGUE, P.C., 17 Central Avenue, Wellsboro, PA 16901
Commonwealth Court & 1

³ The sole witness for the District identified and verified the complaint and attached exhibits as true and correct to the best of her knowledge. N.T. 3-4. Specifically, the facts plead in support of the injunction appear in Count 2 of the complaint, ¶¶ 42-47.