

P.E.R.C. NO. 94-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-55

ENGLEWOOD TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Englewood Teachers Association against the Englewood Board of Education. The grievance asserts that the Board's decision not to renew a non-tenured teacher's employment contract was disciplinary and arbitrable. A certification also asserted that the personnel action was racially discriminatory. The Commission has rejected claims that a non-renewal may be contested through binding arbitration if it can be classified as disciplinary. Any claim that a non-renewal was for racially discriminatory reasons cannot be submitted to binding arbitration and instead should be submitted to the Division on Civil Rights.

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Appearances:

For the Petitioner, Gutfleish & Davis, attorneys
(Suzanne E. Raymond, of counsel)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION AND ORDER

On December 17, 1993, the Englewood Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Englewood Teachers Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it did not renew the employment contract of a non-tenured teacher.

The parties have filed affidavits, exhibits, and briefs.^{1/} These facts appear.

The Association represents all Board personnel except supervisors, directors, administrators, and non-professional employees. The parties entered into a collective negotiations

^{1/} We deny the Board's request for oral argument.

agreement effective from July 1, 1992 until June 30, 1995.

The Board employed Harvey Losak as a social studies teacher at Dwight Morrow High School from February 3 through June 30, 1992. He received a favorable annual performance report for that half-year.

The Board renewed his contract for the 1992-1993 school year. He received two favorable observation reports during that year. He was also cited as an example of a positive role model for educators, received a service award for excellence, and was shown on a national TV network as an example of progressive teaching methods.

On April 15, 1993, the Board voted not to renew Losak's employment contract for the 1993-1994 school year. Losak had not achieved tenure by then. Two parents wrote letters expressing dismay that Losak would not be rehired.

Losak asked for a statement of reasons for this decision. An assistant superintendent responded that Losak had failed "to meet the standards and expectations of the Englewood Board of Education."

Losak asked the Board to reconsider. On September 23, 1993, the Board met in closed session with Losak and his representative and listened to a statement by Losak. It then voted not to rescind its resolution denying Losak a contract for the 1993-1994 school year.

The Association filed a grievance contesting Losak's "firing." The grievance asserts that this personnel action was "disciplinary" and was legally arbitrable under N.J.S.A. 34:13A-29. In a certification, Losak also asserts that the personnel action was racially discriminatory in that his African-American supervisor allegedly wanted to replace him with an African-American teacher.

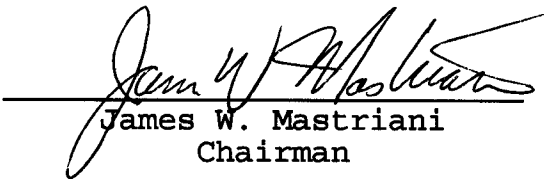
The Board denied this grievance and the Association demanded binding arbitration. This petition ensued.

This grievance contests the Board's substantive decision not to renew a non-tenured teacher's employment contract. In Long Branch Bd. of Ed., P.E.R.C. No. 92-79, 18 NJPER 91 (123041 1992), we reviewed the relevant statutes and cases and held that such claims may not be submitted to binding arbitration. Long Branch specifically rejected a claim that a non-renewal may be contested through binding arbitration if it can be classified as disciplinary. Finally, any claim that a non-renewal was for racially discriminatory reasons cannot be submitted to binding arbitration and instead should be submitted to the Division on Civil Rights. Teaneck Tp. Bd. of Ed. v. Teaneck Tp. Ed. Ass'n, 94 N.J. 9 (1983). We therefore restrain binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: March 29, 1994
Trenton, New Jersey
ISSUED: March 30, 1994