

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLMDEL TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-025

HOLMDEL TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Holmdel Township Board of Education for a restraint of binding arbitration sought by the Holmdel Township Education Association. The Association alleges that the Board violated the parties' collective negotiations agreement when it did not renew a custodian's employment contract. The Commission holds that parties may agree to arbitrate allegedly unjust non-renewals, and that it does not have jurisdiction to determine whether these parties agreed to arbitrate a non-renewal in a particular case.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Reussille, Mausner, Carotenuto,
Barger, Kenny & Steel, LLC, attorneys (Martin M.
Barger, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On November 4, 2004, the Holmdel Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration sought by the Holmdel Township Education Association. The Association alleges that the Board violated the parties' collective negotiations agreement when it did not renew a custodian's employment contract.

The parties have filed briefs and exhibits. These facts appear.

The Association represents certain employees, including custodial, maintenance and grounds personnel. The parties'

collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

On April 27, 2004, the Board's assistant superintendent wrote to a custodian advising him that he would not be reappointed for the 2004-2005 school year. On July 14, the Association demanded arbitration. 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.

The Board argues that Camden Bd. of Ed. v. Alexander, 181 N.J. 187 (2004), controls this matter. It asserts that the parties' contract is silent on the issue of non-renewals and that therefore there is no basis for arbitral review of its non-renewal decision. It asserts that, here, as in Camden, the parties "could have legally agreed to arbitrate allegedly unjust non-renewals of custodians based on such reasons as poor performance," but did not do so.

The Association responds that Camden reaffirms that whether the parties agreed to arbitrate a non-renewal is an issue of substantive arbitrability outside of our scope of negotiations jurisdiction.

In Camden, the Court held that the parties could have legally agreed to arbitrate allegedly unjust non-renewals of custodians based on such reasons as poor performance, but that they had not contractually agreed to do so. Under Ridgefield Park, we do not have jurisdiction to determine whether the parties in this case agreed to arbitrate the non-renewal of a custodian's contract. That determination is for the courts or the arbitrator. Shamong Tp. Bd. of Ed., P.E.R.C. No. 2005-14, 30 NJPER 400 (¶129 2005). Accordingly, we deny the Board's request for a restraint of binding arbitration.

ORDER

The request of the Holmdel Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioners DiNardo and Katz were not present.

DATED: January 27, 2005
Trenton, New Jersey
ISSUED: January 27, 2005