

P.E.R.C. NO. 2008-49

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-2008-030,  
SN-2008-031 & SN-2008-032

TRENTON BUSINESS & TECHNICAL  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Trenton Board of Education for restraints of binding arbitration sought by the Trenton Business & Technical Association. The Association contests the non-renewal of three security officers' employment contracts for the 2007-2008 school year. Because a school board may legally agree to arbitrate non-renewals of employment contracts of non-teaching staff members, the Commission declines to restrain binding arbitration.

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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Respondent.

Appearances:

For the Petitioner, Sumners George, P.C., attorneys  
(Brook A. Bonett, on the brief)

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

DECISION

On November 13, 2007, the Trenton Board of Education petitioned for three scope of negotiations determinations. The Board seeks restraints of binding arbitration sought by the Trenton Business & Technical Association. The Association contests the non-renewal of three security officers' employment contracts for the 2007-2008 school year. Because a school board may legally agree to arbitrate non-renewals of employment contracts of non-teaching staff members, we decline to restrain binding arbitration.

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

The Association represents security officers and other Board employees. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

Article XI is entitled Fair Dismissal Procedure - Unified Article. It provides, in part, for notice by May 15 each year of whether an employee's contract will be renewed and in the event a contract is not to be renewed, for a statement of reasons, an informal appearance before the Board, and a written Board determination.

On March 22 and 23 and April 5, 2007, the Board's security coordinator recommended that the Board not renew the employment contracts for Kenneth Clark, Terrence Farrior and Eric Trent. All three recommendations for non-renewal were for an alleged failure to adhere to the Board's attendance policy.

Neither party submitted any grievance documents. The Association's demands for arbitration allege that the Board violated Article XI. 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 do not consider the merits of the grievances or any contractual defenses the employer may have.

The Board argues that the parties did not agree to arbitrate non-renewals. The Association responds that non-renewals of non-professional employees' contracts as well as the Board's failure to comply with contractual fair dismissal procedures may be submitted to binding arbitration.

Non-renewals of employment contracts for non-professional employees are mandatorily negotiable. Holmdel Tp. Bd. of Ed., P.E.R.C. No. 2005-50, 31 NJPER 83(¶39 2005). Therefore, public employers may legally agree to arbitrate allegedly unjust non-renewals based on such reasons as poor attendance. Camden Bd. of Ed. v. Alexander, 181 N.J. 187 (2004).

As we stated in Holmdel, we do not have jurisdiction to determine whether the parties agreed to arbitrate a particular non-renewal. That determination is for the courts or the arbitrator. The two court decisions that the employer relies on found that the employer had not contractually agreed to arbitrate non-renewals. Camden v. Alexander; Marlboro Tp. Bd. of Ed. v. Marlboro Tp. Ed. Ass'n, 299 N.J. Super. 283 (App. Div. 1997),

certif. den. 151 N.J. 71 (1997).<sup>1/</sup> But Camden v. Alexander found that the parties could have agreed to arbitrate the allegedly unjust non-renewals, and that is the only question within our jurisdiction. The Board's contractual argument is not a basis for restraining arbitration. In addition, the Board's argument that it complied with the Fair Dismissal Procedure goes to the merits of the grievance, not to whether the grievance is legally arbitrable. Wall Tp., P.E.R.C. No. 2002-22, 28 NJPER 19 (¶33005 2001), aff'd 29 NJPER 279 (¶83 App. Div. 2003).

ORDER

The requests of the Trenton Board of Education for restraints of binding arbitration are denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan was not present.

ISSUED: February 28, 2008  
Trenton, New Jersey

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<sup>1/</sup> Camden v. Alexander held that there is no presumption in favor of arbitration. The Legislature overturned that portion of the decision when it amended N.J.S.A. 34:13A-5.3 to provide that "[i]n interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor or requiring arbitration." Alpha Bor. Bd. of Ed. v. Alpha Ed. Ass'n, 190 N.J. 34 (2006).