

P.E.R.C. NO. 2012-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2011-064

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hamilton Township Board of Education for restraints of binding arbitration of grievances filed by the Hamilton Township Education Association. The grievances contest the non-renewal of custodian's employment contracts. The Commission holds that it does not have jurisdiction to determine questions of contractual arbitrability.

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, Destribats Campbell, LLC, attorneys
(William R. Burns, of counsel)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Edward A. Cridge, of counsel)

DECISION

On March 3, 2011, the Hamilton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks restraints of binding arbitration of ten grievances filed by the Hamilton Township Education Association. The grievances contest the non-renewal of custodians' employment contracts for the 2010-2011 school year. We deny the Board's request because we do not have jurisdiction to determine questions of contractual arbitrability.

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

The Association represents custodians and other Board employees. The parties' collective negotiations agreement is effective from July 1, 2009 through June 30, 2012. The grievance procedure ends in binding arbitration.

Article 4.1 provides, in part:

No employee shall be disciplined, reprimanded, reduced in rank or compensation without just cause. Any such action asserted by the Board, or any agent or representative thereof shall be subject to the grievance procedure herein set forth except as otherwise provided by law or regulation.

Article 4.1.1 provides:

Non-certified employees that are not renewed at the end of a school year may request the reason(s) for their non-renewal in writing. Upon receiving the reason(s) for their non-renewal in writing, the employee may request a hearing with Administration to discuss the reason(s) for their non-renewal. The employee is entitled to Association Representation at this hearing. Administration may include, but is not limited to, the HR Director, Director of Elementary Education, Director of Secondary Education, Director of Special Services or the Director of Custodial Services. Administration's decision at the conclusion of the hearing is final.

Article 6:4 provides for layoff by inverse seniority.

Article 6:5 provides that seniority shall not be a factor in cases involving termination or non-renewal based upon job performance or other factors unrelated to an economic reduction-in-force.

On June 2010, the Board voted not to reappoint seventeen custodians for poor attendance. Some of the custodians requested a statement of reasons for their non-renewal which were provided. Several of the custodians requested hearings with Administration pursuant to the parties' agreement. The requested hearings were held on August 19. Following the hearings, the non-renewals were upheld.

On July 23 and September 21, 2010, the Association filed grievances on behalf of certain custodians. On October 4, the Board's attorney denied the grievances stating that non-renewals are not subject to the parties' grievance procedure. On November 11, the Association demanded binding arbitration. The Association's demands for arbitration allege that the Board violated the discipline without just cause and seniority clauses of the parties' agreement as well as past practice. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154, emphasis added]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

The Board argues that the parties did not agree to arbitrate non-renewals of non-certified staff. It states, "if the question to be decided is within the scope of the arbitration clause specifying what the parties have agreed to arbitrate, then it is a matter of substantive arbitrability for a court to decide."

Pascack Valley Reg. H.S. Bd. of Ed. v. Pascack Valley Reg. Support Staff Ass'n., 192 N.J. 489 (2007) quoting Alpha Bor. Bd. of Ed. v. Alpha Ed. Ass'n., 190 N.J. 34, 43 (2006). The Association responds that the grievances are legally arbitrable.

Non-renewals of employment contracts for non-professional employees are mandatorily negotiable. Trenton Bd. of Ed., P.E.R.C. No. 2008-49, 34 NJPER 49 (¶15 2008); Holmdel Tp. Bd. of Ed., P.E.R.C. No. 2005-50, 31 NJPER 873 (¶39 2005). Therefore, a public employer 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).^{1/} However, non-

1/ Camden v. Alexander held that there is no presumption in favor of arbitration in the public sector. 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

(continued...)

renewals, in general, do not equate with a general right to grieve a disciplinary action under a collective negotiations agreement. Pascack Valley, 192 N.J. at 497.

As we have stated in Trenton and Holmdel, we do not have jurisdiction to determine whether the parties agreed to arbitrate a particular non-renewal. Our Supreme Court in Ridgefield Park specifically stated that whether the subject of the grievance is within the arbitration clause of the parties' agreement is for a court to determine. The appellate court decisions that the Board relies on initiated in the courts and not with this Commission. In those decisions, the court found that the parties had not contractually agreed to arbitrate the subject of the grievance. See Pascack Valley; Alpha; and Lenape Reg. H.S. Bd. of Ed. v. Lenape District Support Staff Ass'n, 2010 N.J. Super Unpub. LEXIS 304.

1/ (...continued)
negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubt as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration. Alpha Bor. Bd. of Ed. v. Alpha Ed. Ass'n., 190 N.J. 34(2006).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: December 15, 2011

Trenton, New Jersey