

P.E.R.C. NO. 2016-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-068

PASSAIC EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Passaic Board of Education's request for a restraint of binding arbitration of a grievance filed by the Passaic Education Association. The grievance contests the Board's non-renewal of a security aide as violating a contractual just cause provision. The Commission finds that whether the Board agreed to provide contractual tenure to non-professional employees such as security aides and whether, if so, it had just cause to dismiss them are legally arbitrable.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Yaacov M. Brisman, of counsel and on the brief; Andres Acebo, of counsel and on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (William P. Hannan, of counsel)

DECISION

On April 20, 2015, the Passaic Board of Education filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Education Association of Passaic. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when, without just cause, it terminated a security aide's employment by not renewing him for the 2014-15 school year.

The Board has filed briefs, exhibits, and the certification of its Coordinator of Human Resources, Maria V. Infante. The Association has filed a brief. These facts appear.

The Association represents a broad-based negotiations unit including teachers, paraprofessionals, security personnel, and others employed by the Board. The Board and Association are parties to a CNA effective for the school years 2000-2004 which has been renewed through successor memoranda of agreement, the most recent one covering the 2012-2015 school years. The grievance procedure ends in binding arbitration.

Article 4.9 of the CNA provides, in relevant part:

Paraprofessionals and security personnel who work three consecutive academic years or three consecutive academic years within a period of four consecutive calendar years, shall not be discharged except for just cause.

The Grievant was employed by the Board as a security aide from May 30, 2002 until August 31, 2007 when he was removed as part of a budgetary reduction in force. The Grievant was then appointed in October 2007 as a teacher's aide until 2013 when he was reappointed as a security aide for the 2013-2014 school year. On May 12, 2014, the Superintendent of Schools provided the Grievant with notice of his non-renewal for the 2014-2015 school year. On May 21, Infante sent the Grievant a Statement of Reasons for Non-Renewal which noted he was being non-renewed for performance and attendance reasons. On July 30, the Board held a

Donaldson Hearing.<sup>1/</sup> On August 4, the Board notified the Grievant that it would not be taking any further action on his non-renewal.

On September 19, 2014, the Association filed a grievance asserting that the Board violated Article 4.9 of the CNA, among others, by discharging the Grievant without just cause. The Association seeks that the Grievant be reinstated. The Association demanded binding grievance 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.

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

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<sup>1/</sup> See Donaldson v. Bd. of Ed. of the City of North Wildwood, 65 N.J. 236 (1974) (fairness requires school board to give non-tenured teacher reasons for non-renewal).

The Board asserts that the contractual just cause protections of the CNA are not applicable to the Grievant because he does not satisfy the required consecutive years of service due to his break in service when he was reappointed as a teacher's aide instead of a security aide until 2013. It argues that the Commission should restrain arbitration because the CNA does not expressly waive the Board's managerial prerogative to non-renew fixed-term non-tenured employees. The Association responds that the Board conflates the concepts of legal arbitrability and contractual arbitrability, and that the Commission and Supreme Court have held that a school board may agree to extend contractual tenure to non-professional employees.

The issue of legal arbitrability in this case is settled by longstanding case law. In Wright v. City of East Orange Bd. of Ed., 99 N.J. 112 (1985), the Supreme Court held that a school board may agree to extend contractual tenure to non-professional school board employees and to continue their employment absent just cause for termination or non-renewal. Applying Wright, the Commission has consistently declined to restrain binding arbitration over terminations and non-renewals of school custodians and support staff employees. See, e.g., Egg Harbor Tp. Bd. of Ed., P.E.R.C. No. 2015-10, 41 NJPER 105 (¶37 2014); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2012-32, 38 NJPER 259 (¶88 2012); 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); Washington Tp. Bd. of Ed., P.E.R.C. No. 2004-68, 30 NJPER 135 (¶53 2004); Linwood Bd. of Ed., P.E.R.C. No. 2004-26, 29 NJPER 492 (¶155 2003); Phillipsburg Bd. of Ed., P.E.R.C. No. 2003-73, 29 NJPER 181 (¶54 2003); Nutley Bd. of Ed., P.E.R.C. No. 2002-69, 28 NJPER 242 (¶33091 2002); Tinton Falls Bd. of Ed., P.E.R.C. No. 2002-68, 28 NJPER 241 (¶33090 2002); Bloomfield Bd. of Ed., P.E.R.C. No. 99-53, 25 NJPER 38 (¶30014 1998); Mercer Cty Special Services School Dist., P.E.R.C. No. 97-52, 22 NJPER 409 (¶27223 1996); Atlantic Cty Special Services Bd. of Ed., P.E.R.C. No. 97-51, 22 NJPER 407 (¶27222 1996); Elizabeth Bd. of Ed., P.E.R.C. No. 97-50, 22 NJPER 405 (¶27221 1996); Hunterdon Central Reg. H.S. Bd. of Ed., P.E.R.C. No. 94-75, 20 NJPER 68 (¶25029 1994), aff'd 21 NJPER 46 (¶26030 App. Div. 1995), certif. den. 140 N.J. 277 (1995).

Consistent with the Supreme Court's Wright and Ridgefield Park holdings, and as the Commission has stated recently in Egg Harbor Tp. Bd. of Ed. and Hamilton Bd. of Ed., we do not have jurisdiction to construe whether the subject of a grievance regarding a non-renewal allegedly in violation of a tenure clause is within the arbitration clause of the parties' agreement. That determination is for the arbitrator. The court decisions that the Board relies on held that the parties had not contractually agreed to arbitrate the subject of the grievance, but did not

preclude the parties from agreeing to arbitrate allegedly unjust non-renewals. See Pascack Valley Reg. H.S. Bd. of Ed. v. Pascack Valley Reg. Support Staff Ass'n., 192 N.J. 489 (2007); Camden Bd. of Ed. v. Alexander, 181 N.J. 187 (2004); Glassboro Board of Education v. Glassboro Education Support Professionals Association, 2014 N.J. Super. Unpub. LEXIS 1375 (2014). Accordingly, the Board's contractual arguments are not a basis for restraining arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: November 19, 2015

Trenton, New Jersey