

P.E.R.C. NO. 2017-56

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-022

TRENTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of a grievance contesting its failure to renew a non-tenured school nurse's employment. The Commission notes that absent constitutional or statutory violations, boards of education have virtually unlimited discretion not to renew the contracts of non-tenured teachers.

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, Adams Gutierrez & Lattiboudere,  
LLC, attorneys (John E. Croot, on the brief)

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

DECISION

On January 3, 2017, the Trenton Board of Education (Board) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Trenton Education Association (Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it failed to renew a school nurse's employment for the 2016-2017 school year.

The Board filed a brief, exhibits, and the certification of its Assistant Superintendent, Lissa A. Johnson. The Association has not filed opposition. These facts appear.

The Association represents a broad-based negotiations unit including teachers and other professionals employed by the Board.

The Board and Association are parties to a CNA in effect from September 1, 2015 to August 31, 2016, and September 1, 2016 to August 31, 2018. The grievance procedure ends in binding arbitration.

The grievant was employed by the Board as a non-tenured school nurse assigned to Mott Elementary School during the 2015-2016 school year. Assistant Superintendent Johnson certifies that on April 29, 2016, the Board's Supervisor of Nurses recommended the non-renewal of the grievant's employment contract for the 2016-2017 school year because the grievant failed to maintain a 92% attendance rate and had poor work performance. The Board's Supervisor of Nurses had informal discussions with the grievant on September 4, 2015. In December 2015,<sup>1/</sup> the grievant was provided with a verbal warning and given recommendations to change her behavior/performance. The recommendations include:

- shadow another nurse in district;
- professional development was available during nursing meetings;
- provided New Jersey Code for nursing services; and

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1/ The Board's submission at Exhibit F states that the grievant's performance became an issue in September 2015 and that "December 2016" was the date of the verbal warning. However, that document was signed on April 29, 2016 by Micah Bradley-Freeman, Office of School Health Services. We conclude based on the time line in the record that the verbal warning was given to the grievant in December 2015.

- provided attendance policy.

A follow-up letter addressing concerns was provided to the grievant on January 20, 2016. This letter stated that out of 83 school days, the grievant had an attendance percentage of 86%. On February 3, a meeting was held between the grievant and principal. The purpose of the meeting was to address concerns of parents and staff relative to the grievant's interactions with parents. On April 13, a second notice of attendance was issued to the grievant reflecting that with school being in session for 137 days, she fell within the 88% percentile for her attendance.

Johnson further certifies that on May 9, 2016, the grievant was issued a Notice of "Non-Reemployment" as a school nurse for the 2016-2017 school year. The letter advised the grievant that she was not being offered a new employment contract, and also set forth her rights to request a statement of reasons and a Donaldson hearing. On May 23, the grievant was provided with a written Statement of Reasons for her non-renewal of employment. On May 31, the grievant and her Association representative had an opportunity to appear before the Board in a Donaldson Hearing. On June 2, the grievant was advised that the Board affirmed the non-renewal of her employment contract and that her employment with the Board was to cease on June 30, 2016. On August 5, the Association filed a Request for Submission of a Panel of Arbitrators. 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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405.]

The Board argues that its decision not to reappoint the grievant is a managerial prerogative and may not be submitted to binding arbitration. The Board specifically asserts that a school district's superintendent has the statutory authority to non-renew non-tenured staff members and the Association's grievance concerning non-renewal of the school nurse is non-arbitrable because such actions are not a mandatorily negotiable term and condition of employment and any challenge must be filed with the Commissioner of Education.

In a recent case between the same parties involving a non-renewal of a non-tenured school nurse, Trenton Bd. of Ed., P.E.R.C. No. 2017-042, 43 NJPER 304 (¶86 2017), we stated:

It is well-settled that absent constitutional or statutory violations, boards of education have virtually unlimited discretion not to renew the contracts of non-tenured teachers. Dore v. Board of Educ. of Tp. of Bedminster, 185 N.J. Super. 447 (App. Div. 1982). See also Board of Educ., Tp. of Wyckoff v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497 (App. Div.), certif. denied, 81 N.J. 349 (1979); Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435, 437 (App. Div. 1976); Long Branch Bd. of Ed., P.E.R.C. No. 92-79, 18 NJPER 91 (¶23041 1992). Citing Ridgefield Park, supra, we noted in Long Branch Bd. of Ed. that school boards cannot negotiate away their discretion under the education laws not to offer reemployment for another year to non-tenured teaching staff members. Therefore, a decision to non-renew non-tenured teaching staff members, which includes by definition a school nurse,

N.J.S.A. 18A:1-1, may not be submitted to binding arbitration.

Based on the above authority and the facts before us, and without the benefit of any opposing facts and argument from the Association, we find that this matter may not be submitted to binding arbitration.

ORDER

The Trenton Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall was not present.

ISSUED: March 30, 2017

Trenton, New Jersey