

P.E.R.C. NO. 2020-22

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LYNDHURST BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-056

LYNDHURST EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Lyndhurst Board of Education's for a restraint of binding arbitration of a grievance filed by the Lyndhurst Education Association. The Grievance challenges the non-renewal of a teacher for the 2018-2019 school year as discipline without just cause in violation of the parties' CNA. The Commission finds that the Board's substantive decision not to renew the grievant's employment contract is not mandatorily negotiable or legally arbitrable. Rather, the Association's dispute over the legitimacy of the Board's reasons for the grievant's non-renewal may be resolved through the grievant's pending verified petition to the Commissioner of Education.

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, Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC, attorneys (Dennis McKeever, of counsel and on the brief; Kathleen A. Nestor, on the brief)

For the Respondent, Springstead & Maurice, attorneys (Alfred M. Maurice, of counsel and on the brief; Lauren McGovern, of counsel and on the brief)

DECISION

On March 18, 2019, the Lyndhurst Board of Education (Board) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Lyndhurst Education Association (Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when, without just cause, it did not renew the employment contract of the grievant for the 2018-2019 school year. The Board filed a brief, exhibits, and the certification of its

attorney.<sup>1/</sup> The Association filed a brief, exhibits, and the certification of the grievant.<sup>2/</sup> These facts appear.

The grievant was employed by the Board as a non-tenured guidance counselor from August 26, 2016 through the 2017-2018 school year. By letter dated May 22, 2018, the Superintendent of Schools notified the grievant of her offer and recommendation for re-employment for the 2018-2019 school year.<sup>3/</sup> On May 23, the grievant accepted the offer of employment. On May 29, the Board overruled the Superintendent's recommendation and voted to non-renew the grievant's employment contract.

The Board contends that during the 2017-2018 school year, significant financial issues came to its attention that required immediate and difficult actions, including the placement of a State Monitor in the District. As a result, the Board made the decision that it was not able to renew the grievant's employment contract. The Board asserts that, "[f]ollowing notice of her

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1/ N.J.A.C. 19:13-3.6(f)1 requires that all briefs filed with the Commission in scope of negotiations matters be "supported by certification(s) based upon personal knowledge."

2/ The Association also sought an evidentiary hearing, but did not specify disputed factual issues necessitating a hearing. We deny its request. See N.J.A.C. 19:13-3.7.

3/ The written grievance makes no assertion, and the parties have not argued, as to whether the Board violated the notice requirements set forth in N.J.S.A. 18A:27-10 and 18A:27-11.

employment status," the grievant "did not request the Board's rationale behind her non-renewal."<sup>4/</sup>

On June 5, 2018, the Association filed a grievance alleging that the Board's decision not to renew the grievant's employment was "disciplinary in nature and without just cause," in that it overrode the Superintendent's statutory authority and expertise in the process of recommending the best candidates for renewal. The grievance asserts that this "could only lead to one conclusion, [that] the Board would prefer the candidate of their choice to fill the position." While acknowledging that the administration was "faced with the difficult task of cutting staff due to budgetary cuts," the grievance asserts that the Superintendent presented the best candidates, including the grievant. The relief sought includes the grievant's immediate reinstatement, or compensation of a year's salary and benefits.

The grievant also certifies that she has been advised that members of the Board pressured the Superintendent that if she did not appoint specific staff members based upon their political or familial relationships, the grievant would not be re-hired. When the Superintendent "refused to succumb," the Board voted to non-

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<sup>4/</sup> See N.J.S.A. 18A:27-3.2 (entitling a non-tenured teacher to request a statement of reasons for a nonrenewal); and N.J.A.C. 6A:10-9.1(a) and (c) (entitling a teacher who has received a statement of reasons to request an opportunity to convince the board, via informal hearing, to offer reemployment). See also, Donaldson v. N. Wildwood Bd. of Ed., 65 N.J. 236 (1974). The record here does not reflect what notice was given or when it was received.

renew the grievant. The grievant certifies that this reflects a decades-long "continuing practice of nepotism" in the District.

On June 15, 2018, the Superintendent responded to the grievance and advised the Association of her upcoming departure from the District, and of the Board's willingness to relax the grievance procedure in order for the Association to bring the grievance to the incoming Superintendent.

On June 20, 2018, the grievant submitted a Verified Petition of Appeal to the Commissioner of Education.<sup>5/</sup> On June 27, 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

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<sup>5/</sup> The Association's allegations, arguments and relief sought in this matter are similar to those in grievant's appeal to the Commissioner, claiming the Board non-renewed the grievant for arbitrary and capricious reasons in violation of N.J.S.A. 18A:27-4.1 (see FN5), and seeking to restore her position for the 2019-2019 school year, as well as full pay and benefits for any period after June 30, 2018 in which she did not receive the same from the District.

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.

The Board argues we must restrain arbitration based upon the CNA's provision stating that the term "grievance" and the related grievance procedure "shall not be deemed applicable to . . . [t]he failure or refusal of the Board to renew a contract of a non-tenured employee". This states a contractual defense, the merits of which we will not consider in making a scope of negotiations determination. Ridgefield Park, supra.

The Association argues that the Board non-renewed the grievant for arbitrary and capricious reasons in violation of N.J.S.A. 18A:27-4.1<sup>6/</sup> when a Board member allegedly "threatened and directed the Superintendent . . . to divert from her statutory authority and to comply with the Board's directives in hiring decisions," after the grievant "had been offered and accepted employment from the Respondent which was withdrawn unlawfully." The Association contends that this rendered the non-renewal ultra-vires and unlawful.

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<sup>6/</sup> N.J.S.A. 18A:27-4.1(b) states: "A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A non-tenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed non-renewed."

The Association concedes it may not seek to enforce through binding arbitration the provisions of the school board code of ethics, N.J.S.A. 18A:12-24.1, or the procedures for certain personnel actions requiring the recommendation of the chief school administrator, N.J.S.A. 18A:27-4.1. But the Association urges that the Board by its conduct misapplied Board policies and/or administrative decisions in a manner affecting the grievant's terms and conditions of employment. It argues that this falls within the CNA's definition of a grievance, and that an arbitrator may decide "a factual dispute as to whether the Board member identified, inappropriately impacted the conditions of employment of the staff," and grant a "make whole" award without abridging management rights.

A board's decision not to reappoint a non-tenured teaching staff member at the end of a contract term may not be submitted to binding arbitration, even when a board's reasons for a non-renewal could be classified as disciplinary. Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n, 192 N.J. 489, 497 (2007) (under N.J.S.A. 18A:27-4.1, the non-renewal of a non-tenured employee is, as a general rule, not grievable as a disciplinary action under CNAs); Hunterdon Central Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-92, 18 NJPER 134 (¶23064 1992); Englewood Bd. of Ed., P.E.R.C. No. 94-91, 20 NJPER 188 (¶25085 1994). Such disputes must be submitted to the

Commissioner of Education, not binding arbitration. Englewood Bd. of Ed., P.E.R.C. No. 92-78, 18 NJPER 88 (¶23040 1992).

Consistent with the foregoing, factual disputes as to the accuracy of the reasons advanced by a board for non-renewal decisions address the merits of a board's subjective judgment and may not be submitted to binding arbitration. In Englewood Bd. of Ed. and Englewood Teachers Ass'n, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), rev'd, 150 N.J. Super. 265 (App. Div. 1977), certif. denied 75 N.J. 525 (1977), the appellate court reversed a Commission decision allowing arbitration of a grievance challenging the non-renewals of non-tenured teaching staff members as part of overall staff reductions associated with a school closure. At issue was the factual accuracy of the reasons asserted by the board for the non-renewals. Id. The court noted, "[w]hatever refined distinctions may be advanced between the issue of factual accuracy and 'scrutiny of the subjective judgments' of the board's staff, we are unable to fathom how the association's anticipated arbitration proceeding can avoid dealing with the merits of the board's decision." 150 N.J. Super. at 269. The court added, "If there is a grievance charging arbitrariness by reason of discriminatory practices or other capricious considerations, the avenue of relief is by way of review under the school laws by the Commissioner of Education." Id. at 270, citing N.J.S.A. 18A:6-9.



Applying this precedent to the record facts, we find that the Board's substantive decision not to renew the grievant's employment contract is not mandatorily negotiable or legally arbitrable. The Association disputes the accuracy of the factual reasons advanced by the Board (i.e., budgetary constraints) for its refusal to renew the grievant's employment contract, suggesting the real reason was inappropriate actions of Board members sounding in nepotism. This goes to the merits of the Board's subjective judgment in making that decision, which may not be put to arbitral review. Resolution of that question, and any appropriate relief, may be had through the grievant's pending verified petition to the Commissioner of Education.

ORDER

The request of the Lyndhurst Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Papero and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: October 31, 2019

Trenton, New Jersey