

P.E.R.C. NO. 98-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION

Petitioner,

-and-

Docket No. SN-98-37

LONG BRANCH SCHOOL EMPLOYEES
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Long Branch Board of Education for a restraint of binding arbitration of a matter which the Long Branch School Employees Association seeks to submit to binding arbitration. The Association seeks to arbitrate the Board's non-renewal of a custodian's employment contract. Contractual tenure and other forms of job security for custodians are mandatorily negotiable and the Commission specifically declines to restrain arbitration in cases involving allegations of poor job performance.

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, McOmber & McOmber, attorneys
(Arsen Zartarian, of counsel)

For the Respondent, Chamlin, Rosen, Cavanagh, Uliano,
attorneys (Rachel S. Flanagan, of counsel)

DECISION

On October 3, 1997, the Long Branch Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a matter which the Long Branch School Employees Association seeks to submit to binding arbitration. The Association seeks to arbitrate the Board's non-renewal of a custodian's employment contract.

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

The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 1998. The grievance procedure ends in binding arbitration.

Since 1974, Paul Sweet has been employed by the Board as a substitute custodian. On June 26, 1995, Sweet submitted a written request for consideration for full-time, permanent employment. On July 19, the Board approved Sweet's employment application as a custodian at the Gregory School for September 1, 1995 to June 30, 1996. On August 13, 1995, a Contract of Employment for Non-Teaching Staff Member was executed and Sweet became a full-time, 10-month employee.

On May 6, 1997, the Board voted not to renew Sweet's employment contract for the 1997-98 school year. The letter listed these reasons: (1) failure to follow procedure; (2) poor performance; (3) failure to follow direction; and (4) failure to demonstrate initiative and industriousness.

On June 16, 1997, the Association filed for arbitration. It listed "Sweet/non-renewal of contract" as the statement of the grievance in its demand for arbitration. This petition ensued.

The Board argues that it has a prerogative not to reappoint an employee whose job performance it believes has been unsatisfactory. The Board further argues that this dispute is not contractually arbitrable because Sweet is a non-tenured custodian and Article III provides:

The term "grievance" and the grievance procedure established herein shall not apply to the following matters:

*

*

*

(5) Any complaint arising out of the non-reappointment or non-renewal of a non-tenured employee.

The Board also argues that the Association has not complied with the grievance procedure and that submission of this dispute to arbitration is premature.

The Association asserts that Sweet was terminated without just cause in violation of the agreement. It specifically relies on Article X-F of the parties' agreement. That section provides:

F. Probationary and Seniority.

1. Probationary Period - All custodial employees shall, upon their employment with the Board, serve a probationary period of ninety (90) days.

2. Seniority

a. All custodial employees who have completed three consecutive years of employment in the school district shall be entitled to tenure protections offered by N.J.S.A. 18A:17-3.

The Association concedes that Sweet had not earned tenure under N.J.S.A. 18A:17-3, but asserts that he had become a permanent employee by virtue of completing the probationary period and was thus contractually entitled to use the grievance procedure and not to be discharged without just cause.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 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 cannot consider the merits of the grievance or any of the Board's contractual defenses. We specifically decline to consider whether the fact that Sweet had completed the probationary period entitled him to any contractual job security or right to use the grievance procedure. We also decline to consider the Board's arguments that the Association has not complied with the grievance procedure.

Our Supreme Court has held that contractual tenure and other forms of job security for custodians are mandatorily negotiable. Wright v. East Orange Bd. of Ed., 99 N.J. 112 (1985); see also Emerson Bd. of Ed., P.E.R.C. No. 92-85, 18 NJPER 102 (¶23047 1992). Applying Wright, we have repeatedly declined to restrain binding arbitration of grievances involving terminations and non-renewals of custodians and other support staff employees. Bergenfield Bd. of Ed., P.E.R.C. No. 98-39, 23 NJPER 561 (¶28279 1998); Little Ferry Bd. of Ed., P.E.R.C. No. 94-16, 19 NJPER 448 (¶24210 1993); East Orange Bd. of Ed., P.E.R.C. No. 94-15, 19 NJPER 446 (¶24209 1993); Ridgewood Bd. of Ed., P.E.R.C. No. 92-21, 17 NJPER 418 (¶22201 1991). Contrast Long Branch Bd. of Ed., P.E.R.C. No. 92-79, 18 NJPER 91 (¶23041 1992) (non-renewal decisions involving teachers are non-negotiable). We have specifically declined to restrain arbitration in cases involving allegations of poor job

performance. Little Ferry; Ridgewood. We therefore decline to
restrain arbitration in this case.

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Ricci and Wenzler voted in
favor of this decision. None opposed. Commissioner Boose abstained
from consideration. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998