SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3371-15T2

ELIZABETH BOARD OF EDUCATION,

Plaintiff-Respondent,

v.

ELIZABETH EDUCATION ASSOCIATION,

Defendant-Appellant.

Argued March 28, 2017 – Decided August 16, 2017

Before Judges Reisner and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Union County, Docket No. C-118-15.

Gail Oxfeld Kanef argued the cause for appellant (Oxfeld Cohen, PC, attorneys: Ms. Kanef, of counsel and on the brief).

Daniel J. McCarthy, argued the cause for respondent (Rogut McCarthy LLC, attorneys; Mr. McCarthy, on the brief).

PER CURIAM

Defendant Elizabeth Education Association (the Association) appeals from a Law Division order permanently restraining

arbitration, in response to an order to show cause by plaintiff Elizabeth Board of Education (the Board). We affirm.

The salient facts are not in dispute. During the 2012-13 school year, Charles Scheuermann was employed by the Board under a one-year contract as a non-tenured, non-certified Network Technician. On May 6, 2013, the Board's Superintendent of Schools notified Scheuermann that his contract would not be renewed for the 2013-14 school year based upon a reduction in force (RIF) due to budgetary constraints. Four months later, the Association filed a grievance on behalf of Scheuermann alleging that the Board "violated Article IV, Section H, and any other pertinent articles [of the parties collective bargaining agreement (CBA)], by dismissing [] Scheuermann from his position in violation of the RIF/Recall contract language." Although Scheuermann obtained other employment sometime in February 2014, and his retained private counsel sought to negotiate a financial settlement with the Board for his non-renewal, the Association still pursued its grievance through arbitration.

After an arbitrator was selected, but before a hearing took place, the Board filed an order to show cause and verified complaint with Law Division to restrain arbitration. The trial judge decided the matter on a summary basis, without an evidentiary hearing, and issued an order and letter decision granting the

relief requested. She determined there was no provision of CBA that gave the Association the right to challenge the non-renewal of Scheuermann's contract through the grievance process. The judge further determined that Article IV (H) of the CBA, which authorizes the formation of a joint committee comprised of the parties' representatives to establish layoff and recall procedures, did not apply because the parties failed to respond to her request to advise her on whether a committee was formed.

Before us, the Association argues that Article IV (H) applies regardless of whether a joint committee was established because Scheuermann was laid off and the article provides that a layoff dispute is subject to expedited arbitration. The Association also contends that under Article III's definition of grievance, it can have an arbitrator determine if Scheuermann's non-renewal violates Board policy, the CBA, or an administrative decision. In addition, the Association maintains that the judge essentially held that the parties cannot negotiate binding job security for contract employees, which is contrary to Articles III and IV (H).

As this case was decided on a summary basis, our review of the judge's decision is de novo, considering the factual record in the light most favorable to the non-moving party and according no special deference to the trial court's resolution of purely legal questions. See Estate of Hanges v. Metro. Prop. & Cas. Ins.

Co., 202 N.J. 369, 383 (2010); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Whether a labor dispute is arbitrable is a matter of interpreting the parties' contract. Therefore, like the trial judge, we must first determine what the parties agreed to arbitrate. The question of substantive arbitrability — that is, whether the contract involves something the parties agreed to arbitrate — is for the court to decide.

> [I]f the question to be decided is "whether the particular grievance 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. On the other hand, if the question is simply one relating to "whether a party has met the procedural conditions for arbitration," it is a matter of procedural arbitrability which has traditionally been "left to the arbitrator."
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> [Pascack Valley Reg. H.S. Bd. of Educ. v. Pascack Valley Reg. Support Staff Ass'n, 192 N.J. 489, 496-97 (2007) (internal citations omitted).]

However, the court generally should not construe the provision of the contract on which the party claiming arbitration is relying, so long as, "on its face," it concerns the issue which is the subject of the grievance. Likewise, the court does not consider the underlying merits of an otherwise arbitrable

grievance. See Clifton Bd. of Educ. v. Clifton Teachers Ass'n, 154 N.J. Super. 500, 503-04 (App. Div. 1977).

We first address the Association's argument that it can file a grievance regarding Scheuermann's non-renewal pursuant to Article III. An arbitrable grievance is defined in Article III as follows:

> A "grievance" shall mean a complaint by an employee(s) or by the Association that there has been an inequitable, improper or unjust application, interpretation or violation of Board policy, this Agreement, or an administrative decision, except that the term "grievance" shall not apply to:
>
> Any matter for which a specific method of review is prescribed and expressly set forth by law or any rule or regulation of the State Commissioner of Education; or
>
> A complaint of a non-tenured teacher which arises by reason of his/her not being reemployed; or
>
> A complaint by any certified personnel occasioned by appointment to or lack of appointment to, retention in or lack of retention in any position for which tenure either is not possible or not required.

In accordance with N.J.S.A. 34:13A-5.3, we must construe this clause broadly, in favor of arbitration:

> In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration.

> Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

We conclude that, even giving a broad definition of a grievance in Article III, the clear language of the article does not afford the Association the right to grieve Scheuermann's non-renewal. The article's exclusionary language bars a grievance where there is a manner of review set forth in law, such as here. As a non-tenured school employee whose contract is not renewed, N.J.S.A. 18A:27-4.1 (b) provides Scheuermann a very limited right to appeal the non-renewal:

> A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L.1975, c.132 (C.18A:27-3.2) and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment.

Accordingly, any alleged violation of this statute would be subject to the Commissioner of Education's jurisdiction under Title 18A, and would not fall within the authority of the CBA.

While we agree with the Association that the formation of a joint committee does not dictate application of Article IV (H), there is no merit to the Association's contention that the article authorizes the arbitration of Scheuermann's dispute over his non-renewal. Article IV (H) provides:

> Layoff and Recall: the parties agree to establish a joint committee composed of equal representatives . . . . The committee shall review and establish a procedure of layoff and recall of bargaining unit members not covered by a statutory schedule for layoff and recall in the teachers', custodians' and cafeteria contracts. The parties agree that seniority shall be the method utilized for such new provision, that an employee shall enjoy a maximum of five (5) years on a recall list, that if any individual is recalled to employment at the Board and declines an offer of reemployment, said individual shall be removed from a recall list, that a dispute on the application of the layoff/recall provisions shall be subject to expedited arbitration before a mutually selected arbitrator, and the arbitrator shall not have the authority to award back pay but shall be limited in authority to ordering a different employee be recalled or placed on layoff.

Article IV (H) does not apply to the present situation because Scheuermann was not laid-off. As our Supreme Court has stated, "the term 'layoff,' . . . connotes involuntary dismissal during the term of a contract, and is not applicable to the nonrenewal of a particular employee's appointment at the end of a fixed term." Camden Bd. of Educ. v. Alexander, 181 N.J. 187, 200 (2004).

Scheuermann worked through the end of his 2012-2013 contract. As a non-tenured staff member, he had no right to re-employment for the next school year. Thus, non-renewal of his contract due to budgetary constraints did not constitute a layoff under the provisions of the CBA.

Affirmed.