

I.R. NO. 82-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-122

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 617,

Respondent.

SYNOPSIS

In an interim relief proceeding, a Hearing Examiner, acting on behalf of the Commission, restrained arbitration inasmuch as a scope of negotiations petition indicated clearly that the matter involved discipline of one Ronald Brown, who is covered by the Civil Service Law and Regulations; State v. Local 195, 179 N.J. Super. 146, 152-153 (App. Div. 1981).

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INTERLOCUTORY DECISION AND ORDER

The above matter having been opened to the Public Employment Relations Commission on June 24, 1982 by Moonyene Jackson, Esq. attorney for the above Petitioner, and the Commission's named designee, Alan R. Howe, having read the verified Petition for Scope of Negotiations Determination, and Exhibits and Letter Memorandum in support of its request for temporary restraint of arbitration proceedings scheduled for June 28, 1982 wherein the issue is the arbitrability-negotiability of a grievance concerning the discipline imposed upon Ronald Brown, an employee of the Petitioner who is covered by the Civil Service Law and Regulations; and Arnold S. Cohen, Esq, of Rothbard, Harris and Oxfeld Esqs., attorney for the Respondent, having appeared in opposition to the grant of temporary restraint of arbitration proceedings, supra, and the undersigned having considered the moving papers and the oral argument of counsel for Petitioner and Respondent on June 24, 1982; and it appearing that the Petitioner has satisfied the two standards for the grant of interim relief, namely, the "substantial likelihood of success on the merits" and "irreparable harm" for the following reasons:

1. If an issue is non-negotiable is it not subject to binding arbitration: Hunterdon Central High School v. Hunterdon Central High School Teachers' Association, 174 N.J. Super. 468 (App. Div. 1980), aff'd., 86 N.J. 43 (1981).

2. Terms or conditions of employment are non-negotiable if preempted by a specific statute or administrative regulation: State v. State Supervisory Employees

Association, 78 N.J. 54, 81 (1978).

3. Discipline involves a non-negotiable management prerogative: State v. Local 195, 179 N.J. Super. 146,152-53 (App. Div. 1981). There the Court said at p. 154: "...The Civil Service Act has preempted the disciplinary determinations of... State employees... leaving no room for collective negotiations or binding arbitration ..."

4. The Grievant Ronald Brown is covered by the Civil Service Act and was disciplined under the Act.

5. The "irreparable harm" standard is satisfied herein by the incurring of the expense of arbitration proceedings and the expense of time of the parties herein involved when there is a "substantial likelihood of success on the merits" that the Petitioner will prevail before the Commission on its Petition for Scope of Negotiations Determination: Englewood Board of Education v. Englewood Teachers Association, 135 N.J. Super. 120 (1975).

Accordingly, it is HEREBY ORDERED that the Petitioner's request to restrain the arbitration involving the discipline of Ronald Brown on June 28, 1982 be and same is hereby GRANTED pending the disposition of this matter by the Commission.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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Alan R. Howe  
Hearing Examiner

Dated: June 24, 1982  
Newark, New Jersey