

I.R. NO. 88-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-36

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain an arbitration proceeding brought by the Old Bridge Education Association against the Old Bridge Township Board of Education. The Education Association sought to arbitrate the enforcement of a contract provision calling for all suspensions to be with pay during the pendency of tenure proceedings. It was found that the Board of Education does not have a substantial likelihood of success in seeking the restraint of this arbitration for the Commission will most likely find this contract provision negotiable.

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Appearances:

For the Petitioner
Wilentz, Goldman & Spitzer
(Steven J. Tripp, of counsel)

For the Respondent
Oxfeld, Cohen & Blunda
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On December 16, 1987, the Old Bridge Township Board of Education filed a Scope of Negotiations Petition with the Public Employment Relations Commission seeking a determination that certain provisions of the collective negotiations agreement between itself and the Old Bridge Education Association are non-negotiable and therefore non-arbitrable. The Petition was accompanied by an Order to Show Cause seeking restraint of an arbitration hearing. A telephonic hearing on the application was conducted on December 18, 1987.

The Education Association filed a grievance seeking enforcement of a contract provision providing that suspensions pending tenure proceedings shall be with pay.

Two employees of the Petitioner were suspended during the pendency of tenure proceedings which were brought by the Board. Their suspensions were without pay. The Board argues that the contract provisions in question is outside the scope of negotiations and therefore not arbitrable. Specifically, binding arbitration is pre-empted by the alternate statutory appeal procedure.

N.J.S.A. 18A:6-10 et seq. provides that no tenured employee may be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct or other just cause, and then only after a hearing before the Commissioner or his representative after a written charge has been preferred against such person. Part of the statutory scheme is in N.J.S.A. 18A:6-14 which provides,

Suspension upon certification of charge:
compensation; reinstatement

Upon certification of any charge to the Commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commission of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such persons, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal.
(emphasis supplied)

In County of Essex, P.E.R.C. No. 87-156, the Commission dealt with a similar fact pattern involving a Civil Service

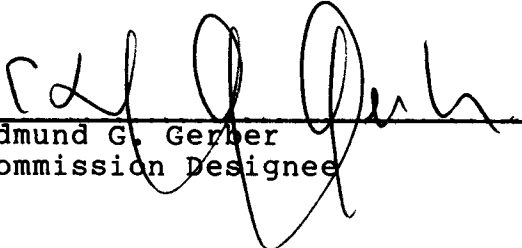
employee. A contract provided that suspensions pending the disposition of disciplinary charges before the Civil Service Commission shall be with pay. The employer contended that the grievance involved a disciplinary dispute which may not be submitted to binding arbitration because the grievant had an alternate statutory appeal procedure before the Civil Service Commission. The Commission declined to restrain arbitration. It held that the availability of a statutory alternative to arbitration to contest the merits of a disciplinary action does not preclude arbitration over compliance with procedural safeguards associated with discipline. Such matters directly and intimately affect employee work and welfare and are negotiable provided they are not preempted by statute or regulation and do not significantly interfere with an employer's ability to impose discipline. See South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1981); Maplewood Tp., P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978).

An employee's ability to serve a suspension with pay until guilt or innocence is departmentally determined directly affects his work and welfare and protects his interest in due process. Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 118 LRRM 3041 (1985); Brock v. Roadway Express, Inc., ___ U.S. ___, ___ S.Ct ___, 95 L.Ed.2d. 239 (1987). It does not significantly interfere with the County's ability to discipline.

Here, 18A:6-14 leaves to the employer's discretion whether or not to provide pay during a suspension. Having found that pay during a suspension, pending the resolution of discipline is negotiable it cannot be said that the Township of Old Bridge has a substantial likelihood of success in prevailing before the full Commission in its petition to restrain arbitration. The arbitration here must go forward.

It must also be noted that the Scope of Negotiations petition here was filed on December 16, 1987 although the arbitration was scheduled for December 22, 1987. The employer obviously knew of this arbitration several months in advance and yet chose not to seek a restraint until some four working days before the scheduled date of the arbitration. The petitioner's own delay in bringing this action calls into question the need for an extraordinary remedy. The Commission should not easily tolerate such lateness in filing such scope petition absent a determination of good cause for the delay involved.

Accordingly for all the reasons stated above, the application for interim relief is denied.


Edmund G. Gerber
Commission Designee

DATED: December 23, 1987
Trenton, New Jersey