

P.E.R.C. NO. 2009-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PLAINSBORO,

Petitioner,

-and-

Docket No. SN-2009-014

PLAINSBORO P.B.A. LOCAL 319,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the Township of Plainsboro's request for a restraint of binding arbitration of a grievance filed by Plainsboro PBA Local 319. The grievance contests the bringing of disciplinary charges and the removal of e-mails from the PBA bulletin board. The Commission restrains arbitration to the extent the PBA seeks to challenge the Township's right to bring disciplinary charges. The request is denied to the extent the PBA seeks to challenge the removal of postings from the PBA bulletin board.

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.

P.E.R.C. NO. 2009-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PLAINSBORO

Petitioner,

-and-

Docket No. SN-2009-014

PLAINSBORO P.B.A. LOCAL 319,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C.,
attorneys (John A. Boppert, on the brief)

For the Respondent, Mets, Schiro & McGovern, LLP,
attorneys (James M. Mets, on the brief)

DECISION

On September 4, 2008, the Township of Plainsboro petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Plainsboro P.B.A. Local 319. The grievance contests the bringing of disciplinary charges and the removal of e-mails from the PBA bulletin board. We restrain arbitration over the decision to bring disciplinary charges, but not over the bulletin board dispute.

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

The PBA represents all full-time police officers. The parties' collective negotiations agreement is effective from

January 1, 2005 through December 31, 2007. The grievance procedure ends in binding arbitration.

Article XVIII, Bulletin Boards and Office Space, provides, in relevant part:

The Township shall permit the Association to have its own bulletin board The Chief of Police may remove from the bulletin board any material which is deemed obscene or patently offensive. Such material shall be promptly returned to the President along with the reason(s) for such removal. Removal of material under this section is grievable through Step 2 of the Grievance Procedure. The decision of the Township Administrator shall be binding and final.

Article XXVII, Discrimination and Coercion, provides in relevant part:

There shall be no discrimination, interference or coercion by the Township or by any of its agents against the Association or against the employees represented by the Association because of membership or non-membership or activity or non-activity in the Association. . . .

On March 1, 2008, the PBA President posted printouts of three emails on the PBA bulletin board. The emails concerned an order "banning" one squad from the police dispatch area.

On March 5, 2008, the Chief removed the emails from the bulletin board because she found them offensive and returned them to the President with a note. On March 10, the President sent an email response to the Chief. On March 11, the Chief responded with an email.

On March 14, 2008, the Chief charged the President with Conduct Unbecoming a Police Officer; Conduct Unbecoming a Public Employee; Conduct Unbecoming a Supervisory Public Employee; and Conduct Subversive to the Good Order of the Department. She recommended that he be demoted from his rank of Corporal to the rank of Police Officer and be suspended for 60 twelve-hour days, pending a hearing.

On March 17, 2008, the President filed a grievance with the Township Administrator. It claims that his emails were sent as the PBA President to the Chief concerning a policy issue. It further claims that:

The actions of both Chief Bondurant and Lt. DeSimone violate CBA Article XXVII - Discrimination and Coercion. This article clearly states that there shall be no discrimination, interference or coercion by the Township or by any of its agents against the Association or against the employees represented by the Association because of membership or non-membership or activity or non-activity in the Association.

Furthermore, Chief Bondurant's actions also violate CBA Article XVII - Bulletin Boards and Office Space. This article clearly states that the Chief of Police may remove from the bulletin board any material which is deemed obscene or patently offensive. The Chief did not provide any substantive reason as to what was offensive.

Remedy sought:

Cease and desist from continued discrimination, interference and coercion in compliance with CBA Article XXVII.

Rescind all disciplinary action against the PBA President which was issued as a violation of CBA Article XXVII.

Compliance with CBA Article XVII[I].

On March 19, 2008, the Administrator denied the grievance and the President requested a formal hearing on the disciplinary charges.

The Township argues that the grievance is preempted given the grievant's primary allegation of anti-union animus. It claims such allegations are within our exclusive unfair practice jurisdiction. The Township also argues that the President was not engaging in protected activity and that the Chief has the contractual authority to remove offensive material from the bulletin board.

The PBA responds that discipline is an arbitrable issue, but it recognizes that if major discipline is imposed, the President would have an alternate statutory appeal procedure. The PBA claims that an arbitrator may apply the contractual language permitting the Chief to remove from the bulletin board any material deemed obscene or patently offensive. Finally, the PBA argues that it may arbitrate its claim that the Township discriminated against the President for his PBA activities.

We first address the Township's argument that the allegations are within our exclusive unfair practice jurisdiction. Jefferson Tp. Bd. of Ed. v. Jefferson Tp. Ed.

Ass'n, 188 N.J. Super. 411 (App. Div. 1982), a case cited by the Township in support of that argument, would not preclude arbitration over minor discipline in retaliation for union activity, should it be imposed, even though that allegation could also be raised in an unfair practice charge.

Jefferson held that a grievance alleging discipline in retaliation for union activity could not proceed to binding arbitration. That case was decided during a brief period when disciplinary disputes were not legally arbitrable. See State v. Local 195, 179 N.J. Super. 146 (App. Div. 1981), certif. den. 89 N.J. 433 (1982); L. 1982, c. 103, eff. 7/30/82. Given that the underlying dispute was not legally arbitrable, the allegation of anti-union discrimination in Jefferson did not convert that dispute into an arbitrable one. However, minor discipline of police officers can now be submitted to binding arbitration. And a dispute that is legally arbitrable does not become non-arbitrable simply because it also involves an allegation of anti-union discrimination. Teaneck Tp., P.E.R.C. No. 2002-20, 28 NJPER 15 (¶33003 2001) (arbitrator's jurisdiction to hear the contractual merits of otherwise negotiable disputes was not displaced because our unfair practice jurisdiction could be invoked to review an aspect of those claims).

Having clarified that minor discipline can be reviewed through binding arbitration, we nevertheless hold that the

Township has a prerogative to impose discipline in the first instance, subject to review either pursuant to the grievance procedure or in the Superior Court, depending on whether the final discipline imposed is minor or major. N.J.S.A. 34:13A-5.3. At this point, no final discipline has been imposed; only charges have been brought. Under these circumstances, we will restrain arbitration over this challenge to the Township's right to bring disciplinary charges in the first instance. City of Jersey City, P.E.R.C. No. 88-149, 14 NJPER 473 (¶19200 1988), recon. granted P.E.R.C. No. 89-15, 14 NJPER 563 (¶19235 1988).

As for the bulletin board, the contractual language permits the Chief to remove postings deemed obscene or offensive. This appears to protect the Township's concerns. Compare State of New Jersey (Dept. of Human Services), P.E.R.C. No. 99-65, 25 NJPER 93 (¶30040 1999) (no unfair practice violation when employer had good faith belief that it had a contractual right to remove posting from union bulletin board). This dispute over the application of the contractual language can be resolved by the arbitrator.

ORDER

The request of the Township of Plainsboro for a restraint of binding arbitration is granted to the extent the PBA seeks to challenge the Township's right to bring disciplinary charges. The request is denied to the extent the PBA seeks to challenge the removal of postings from the PBA bulletin board.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Joanis was not present.

ISSUED: February 26, 2009

Trenton, New Jersey