

P.E.R.C. NO. 2002-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RINGWOOD,

Petitioner,

-and-

Docket No. SN-2002-3

P.B.A. LOCAL 247,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Ringwood for a restraint of binding arbitration of a grievance filed by P.B.A. Local 247. The grievance challenges a denial of union leave. The PBA also filed an unfair practice charge alleging that the Borough violated the New Jersey Employer-Employee Relations Act when it denied an officer paid time off to attend PBA executive board and collective bargaining committee meetings and then advised him that he would not be given any time off for any PBA business or conventions. The PBA's request to hold the processing of the unfair practice charge in abeyance pending arbitration proceedings was granted. The Borough seeks to stay arbitration and have this matter proceed in the unfair practice forum. The Commission denies the Borough's request. It holds that union leave is mandatorily negotiable and that the PBA is not required to litigate as an unfair practice its otherwise arbitrable claim that the Borough breached the parties' contract by denying union leave.

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, Richard J. Clemack, attorney

For the Respondent, Zazzali, Fagella, Nowak & Kleinbaum,
P.C., attorneys (Paul L. Kleinbaum, of counsel)

DECISION

On August 10, 2001, the Borough of Ringwood petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 247. The grievance challenges a denial of union leave.

The Borough has filed a letter brief in support of its petition. The PBA has filed a letter response. These facts appear.

The PBA represents members of the police department excluding superior officers. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1999 through December 31, 2001. The grievance procedure ends in binding arbitration.

Officer Anthony Calabrese was denied leave to attend PBA executive board and committee meetings. The PBA filed a grievance and on April 5, 2001, the PBA demanded arbitration.

On May 17, 2001, the PBA filed an unfair practice charge alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it denied Calabrese paid time off to attend PBA executive board and collective bargaining committee meetings and then advised him that he would not be given any time off for any PBA business or conventions. The PBA alleges that leave was denied in retaliation for Calabrese's support of a certain individual for the position of county police academy director.

On July 9, 2001, a Commission staff agent conducted an exploratory conference on the unfair practice charge. The case did not settle. On August 9, the PBA's request to hold the processing of the unfair practice charge in abeyance pending the arbitrator's decision was granted. On August 10, this petition ensued.

The Borough asserts that since the PBA has alleged anti-union retaliation, arbitration must be stayed and the matter must proceed in the unfair practice forum. It relies on Jefferson Tp. Bd. of Ed. v. Jefferson Tp. Ed. Ass'n, 188 N.J. Super. 411 (App. Div. 1982).

The PBA asserts that there is no legal basis to support the assertion that this matter must be resolved through unfair practice proceedings rather than grievance arbitration. It states

that it is the Commission's policy to defer to grievance arbitration proceedings where there are underlying breach of contract issues, such as in this case. The PBA notes that the Director of Unfair Practices has already agreed to hold the processing of the charge in abeyance.

N.J.S.A. 34:13A-5.3 requires public employers to negotiate grievance procedures that may provide for binding arbitration as a means of resolving disputes. Disputes over mandatorily negotiable issues can legally be submitted to binding arbitration. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

The filing of an unfair practice charge does not divest an arbitrator of jurisdiction to address an otherwise legally arbitrable dispute. Jefferson involved the arbitrability of a grievance alleging discipline in retaliation for union activity. 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, we have since clarified that 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, 27 NJPER ____ (¶____ 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); Manville Bd. of Ed., P.E.R.C. No. 94-58, 19 NJPER 605 (¶24288 1993); contrast Teaneck Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 9 (1983) (restraining arbitration of claim that discriminatory motive tainted hiring decision since such a decision is a managerial prerogative). That clarification also applies to disciplinary disputes that are now legally arbitrable under the 1982 amendments to N.J.S.A. 34:13A-5.3. See Jefferson, 188 N.J. Super. at 414 n.2.

In this case, it is undisputed that union leave is a mandatorily negotiable subject, absent a preemptive statute or regulation. There is no such statute or regulation here. Accordingly, we hold that the PBA is not required to litigate as an unfair practice its otherwise arbitrable claim that the Borough breached the parties' contract by denying Calabrese union leave.

ORDER

The request of the Borough of Ringwood for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: November 29, 2001
Trenton, New Jersey
ISSUED: November 30, 2001