

I.R. NO. 94-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CHERRY HILL,

Petitioner,

-and-

Docket No. SN-94-69

CHERRY HILL SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain arbitration between the Township of Cherry Hill and the Cherry Hill Superior Officers Association. The Association is seeking to arbitrate a grievance contesting a personnel action the Township has taken against Francis Ward, a lieutenant in the police department. Ward individually brought an action against the Township in Superior Court claiming he was unlawfully discriminated against because of his medical history. The Township argues that because Ward is seeking compensation pursuant to the New Jersey Law of Disabilities, the Superior Officers Association is precluded from bringing its action to arbitration. However, the Association is a different party. It is not the plaintiff in Ward's action. Its interest in the enforcement of its contract is not equivalent to the individual rights of Ward. The statutory language of the New Jersey Law of Disabilities is not applicable here.

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Appearances:

For the Petitioner  
DeCotiis & Pinto, attorneys  
(S. Lee Cohen, of counsel)

For the Respondent  
Ferg, Baron & Gillespie, attorneys  
(Thomas M. Barron, of counsel)

INTERLOCUTORY DECISION

The Township of Cherry Hill filed a Scope of Negotiations Petition with the Public Employment Relations Commission on January 31, 1994 seeking to restrain the arbitration of a grievance initiated by the Cherry Hill Police Superior Officers Association. The Petition was accompanied by an Application for an interim restraint of the arbitration pending a final Commission decision. That Application was made returnable and heard on March 1, 1994.

The SOA is seeking to arbitrate a grievance which contests certain personnel actions the Township has taken with regard to Francis Ward, a lieutenant in the police department. Specifically, the SOA seeks to arbitrate the Township's failure to pay Ward his

proper salary for a work-related disability and its requiring him to utilize sick leave in a manner contrary to the contract. It further asserts that the Township failed to provide medical benefits and reimbursement for medical expenses as provided for in the contract and failed to provide light duty employment for Ward in accordance with past practice.

The Township seeks to restrain the arbitration on two grounds. First, it argues that the creation of light duty is non-negotiable and non-arbitrable. Second, it argues that Ward individually has brought several legal actions against the Township. In these actions, Ward claims he was unlawfully discriminated against by the Township because of his medical history. The Township argues that a Superior Court Judge, in granting a Motion for Summary Judgment, has ruled that the Township has not as yet, "unlawfully discriminated against (Ward) or taken any adverse action against (Ward's) employment or position as a lieutenant on the Cherry Hill Police Department." It is not disputed that Ward intends to appeal this decision.

In this action, Ward seeks compensatory damages pursuant to the New Jersey Law of Disabilities, which provides at §10:5-27, in pertinent part,

"acts declared unlawful by Section 11 of the Act of this Act, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned."

The Township argues that this statutory language precludes the SOA from proceeding on the arbitration.

I find the action brought by Ward, on his own behalf, is a different action, with different interests than the grievance and demand for arbitration which is the subject of this Scope of Negotiations Petition before the Commission.

In Borough of Fair Lawn B/E, 174 N.J. Super. 554 (App. Div. 1980) at page 559 the Court stated:

As the Supreme Court articulated this collectivity principle in Red Bk. Reg'l Ed. Ass'n v. Red Bk. Reg'l High School Bd. of Ed., 78 N.J. 122 (1978),

When an employee elects to have his grievance presented through his majority representative it may no longer be accurately viewed as solely his grievance. It is then also the grievance of his unit, brought on behalf of the entire membership of the unit in the name of their chosen collective representative.

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It further stated:

We are, therefore, satisfied that the right of the association to prosecute a grievance for the purpose not only of protecting the individual interest of the aggrieved member but, more significantly, its own representational interest in the vindication of the contract is not a right which can be adversely affected by the individual member's decision to pursue a private remedial alternative available in another forum.

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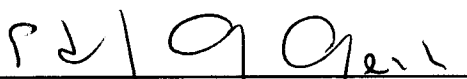
The Petitioner also relies upon Township of Teaneck, 94 N.J. 9 (1983) wherein it was held that a teachers claim of discrimination may not be submitted to binding arbitration. There, the same party, the Teaneck Education Association, brought both the action before the Division of Civil Rights and filed for arbitration under a collective negotiations agreement. Accordingly Teaneck is not controlling.

The petitioner argues that the language in the Law of Disabilities provides that "no other action may be brought on the same grievance", should preclude the arbitration. However, this statutory language does not mean the "filing of a grievance" in a labor relations context. This is a broad-based statute that is separate and apart from the State's labor laws. The term grievance in the statute is used generically and not as a term of art in the labor relations sense. I find that, as in Fair Lawn, the SOA's rights are distinct and separate from Wards.

Finally, although the Petitioner is correct that a demand to create a light duty assignment is a non-negotiable and non-arbitrable (See, City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992), where a claim is made that such an assignment already exists, such a demand for arbitration is arbitrable and may go forward. Borough of River Edge, P.E.R.C. No. 94-66, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 1994); City of Englewood, P.E.R.C. No. 93-110, 13 NJPER 276 (¶24140 1993).

Accordingly, it is hereby ORDERED that to the extent the Cherry Hill SOA seeks to arbitrate the creation of a light duty assignment, the arbitration is restrained. However, the arbitration may go forward as to all other issues. This is an interim order only. This matter will go forward to a final Commission decision.

BY ORDER OF THE COMMISSION

  
 Edmund G. Gerber  
 Commission Designee

DATED: March 7, 1994  
 Trenton, New Jersey