P.E.R.C. NO. 2000-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and- Docket No. CO-H-98-471

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Communications Workers of America, AFL-CIO's motion for reconsideration of P.E.R.C. No. 2000-36. In that decision, the Commission dismissed a Complaint based on an unfair practice charge filed by CWA against the State of New Jersey. The motion does not ask the Commission to reconsider its holding that the case does not present a bad faith repudiation. CWA argues that once that ruling was made, the Commission should have deferred the charge to arbitration instead of considering whether the SHBC's actions required negotiations or implying that the parties' contracts did not guarantee existing co-payment levels. The Commission grants reconsideration to clarify that its initial decision was not intended to imply any view of the merits of CWA's contractual claim. The Commission concludes that deferral to arbitration is not appropriate at this juncture. The Commission declines to order deferral when the employer will not waive its procedural defenses and the unfair practice litigation has ended. The Commission affirms its order.

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. 2000-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and- Docket No. CO-H-98-471

COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, John J. Farmer, Jr., Attorney General
(George N. Cohen, Deputy Attorney General)

For the Charging Party, Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION

On December 1, 1999, the Communications Workers of America, AFL-CIO, moved for reconsideration of P.E.R.C. No. 2000-36, 26 NJPER 12 (¶31001 1999). That decision dismissed a Complaint based on an unfair practice charge CWA had filed against the State of New Jersey. The charge alleged that the State violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the State Health Benefits Commission ("SHBC") unilaterally announced increases in certain co-payments for State employees participating in Dental Plan Organizations ("DPOs").

In dismissing the Complaint, we first held that we did not have unfair practice jurisdiction to consider CWA's claim that the co-payment increases violated a maintenance of benefits clause in the parties' collective negotiations agreements; that claim

asserted at most a mere breach of contract rather than a bad faith repudiation. 26 NJPER at 13-14.

We then considered whether the SHBC's approval of the DPO contract renewal package violated a statutory obligation to negotiate. Analyzing the provisions of the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq., we held that no statutory duty to negotiate was violated and that any challenge to the SHBC's actions or authority must be made in another forum. 26 NJPER at 14-15.

CWA does not ask us to reconsider our holding that this case does not present a bad faith repudiation. But it argues that once we made that ruling, we should have deferred its charge to arbitration instead of considering whether the SHBC's actions required negotiations or implying that the parties' contracts did not guarantee existing co-payment levels. The State opposes reconsideration, arguing that deferral would be inappropriate because it did not violate the contract and the State Health Benefits Program Act preempts negotiations over the SHBC's administrative actions.

We asked the parties to inform us whether a grievance has been filed and whether the employer had agreed to waive any contractual arbitrability defenses it might have. CWA filed a grievance on March 7, 2000 and asked the State to waive its procedural defenses. It asserted that it had discussions with the State's Office of Employee Relations before filing its charge and that it was led to believe the dispute should be resolved by the

Commission. The State responds that the level of co-payments is a non-negotiable and non-arbitrable issue and that it will not and cannot waive its contractual arbitrability defenses.

We grant reconsideration to clarify that our initial decision was not intended to imply any view of the merits of CWA's contractual claim. However, we will not defer this dispute to arbitration.1/

Our decision reasoned that if the parties' collective negotiations agreements did not guarantee co-payment levels, then the SHBC presumably had statutory authority and discretion to enter into the DPO contracts it believed best. Because we do not have jurisdiction over mere breach-of-contract claims, our initial decision did not address or resolve the question of whether a contractual guarantee existed. We will assume that question could appropriately be decided by an arbitrator.2/ Nevertheless, deferral is not appropriate at this juncture.

It is settled that deferral cannot be compelled when an employer will not agree to waive any contractual arbitrability defenses it may have. Pemberton Tp., P.E.R.C. No. 99-90, 25 NJPER

1/ We deny CWA's request for oral argument.

2/ In our decision, we declined to address that question since it had not been presented. 26 NJPER 15 n.4. A similar question has since been presented in a case involving a local SHBP employee. Hudson Cty., P.E.R.C. No. 2000-53, 26 NJPER 71 (¶31026 1999), app. pending. We declined to restrain arbitration.

174 (¶30080 1999); Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 266 (¶14122 1983); Hexter, The Developing Labor Law, 459 (3d ed., Cumulative Supp. 1999). Moreover, deferral is ordinarily invoked at the outset of unfair practice litigation, not after its completion. We decline to order deferral when the employer will not waive its procedural defenses and the unfair practice litigation has ended.

Our decision does not preclude CWA from seeking arbitration of its grievance. Contractual arbitrability issues are generally outside our jurisdiction and must be considered in another forum. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). We do not express any opinion on the merits of CWA's contractual claim or the employer's contractual defenses.

ORDER

Reconsideration is granted. The order in P.E.R.C. No. 2000-36 is reaffirmed.

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 voted against this decision.

DATED: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000