P.E.R.C. NO. 85-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST WINDSOR,

Petitioner,

-and

Docket No. SN-85-41

Local 1040, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Township of West Windsor to restrain binding arbitration of a grievance filed by Local 1040, Communications Workers of America, AFL-CIO. The grievance alleged that an equipment operator, who was unable to return to work due to an on-the-job injury, was discharged without cause. The Commission holds that the dispute may be submitted to binding arbitration since job security provisions and protection from unfair or unwarranted dismissals are mandatorily negotiable.

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Appearances:
For the Petitioner, Schragger, Schragger & Lavine, Esqs. (Lucille E. Davy, Of Counsel)

For the Respondent, Steven P. Weissman, Of Counsel

DECISION AND ORDER

On December 10, 1984, the Township of West Windsor ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a permanent restraint of binding arbitration of a grievance filed by Local 1040, Communications Workers of America, AFL-CIO ("Local 1040"). The grievance alleges that an equipment operator was discharged without cause.

Both parties have filed briefs and accompanying documents. The following facts appear.

Local 1040 is the majority representative of the Township's blue and white-collar employees. The Township and Local 1040 have entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

The Township employed Ivory Jackson in the position of "Equipment Operator". On July 5, 1983, he commenced a disability leave as a result of an on-the-job injury. On September 26, 1984, the Township, being shorthanded in the road department, notified Jackson that on October 1, 1984, the Township Committee would consider whether to terminate him because of his inability to work. On October 1, 1984, Jackson presented two doctors' notes, one indicating he could resume work on a trial basis, despite still nagging injuries, the second requesting that he be assigned to light duties for two weeks. On October 15, 1984, the Township terminated Jackson. On October 28, 1984, Local 1040 filed a grievance alleging that his discharge violated the provisions of the parties' agreement entitled injury leave, non-discrimination clause, and disciplinary action. This grievance was denied and on November 1, 1984, Local 1040 sought binding arbitration. This petition followed.

The Town contends that the dispute may not be submitted to arbitration because the decision to dismiss an employee is a managerial prerogative. Finally, it asserts that the Township acted pursuant to its contract in terminating Jackson and the dispute is not contractually arbitrable.

Local 1040 contends that a discharge constitutes discipline within the meaning of the amendment to N.J.S.A. 34:13-5.3 and therefore is arbitrable.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield

Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations? Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an qrbitrator and/or the courts.

Thus, in the instant case, we do not consider the merits of Local 1040's contractual claims or the Township's contractual defenses or its claim that the grievance is not contractually arbitrable. Rather, we consider only the abstract question of the arbitrability of Local 1040's claim that the grievant's discharge was improper under the injury leave,non-discrimination and disciplinary action clauses.

Under all the circumstances of this case, we hold that the instant dispute may be submitted to binding arbitration. This public employer is statutorily barred from granting a paid injury leave of absence exceeding one year. N.J.S.A. 40A:9-7; County of Morris, P.E.R.C. No. 79-2, 4 NJPER 304 (Para. 4153 1978). There is no statutory impediment, however, to granting a longer unpaid injury leave of absence or to making decisions to deny longer unpaid leaves

subject to an arbitrator's review for fairness.[1/] In essence, the Township was denying the continuation of an unpaid leave of absence when it discharged the grievant.[2/] Further, the Appellate Division has held that job security and protection from unfair or unwarranted dismissal are mandatorily negotiable. Plumbers & Steamfitters v. Woodbridge Bd. of Ed., 159 N.J. Super. 83 (App. Div. 1978); this grievance appears to involve such claims.[3/]

ORDER

The Township of West Windsor's request for a permanent restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin, Wenzler and Hipp voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985

1/ We stress that we are not deciding the contractual merits of this case. We also note that a claim of discrimination concerning a term and condition of employment, such as a leave of absence, may be submitted to binding arbitration. Teaneck Bd. of Ed. v. Teaneck Teachers Assn, 94 N.J. 9 (1983). Finally, we note this grievance does not demand that an employee be allowed to return to work although unable to perform all his or her duties. Contrast City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (Para. 14104 1983).

2/ The Township was of course free to hire another employee to do needed work during Jackson's unpaid absence.

3/ We need not express any opinion as to whether this particular discharge should be considered a form of discipline within the meaning of the amendment to section 5.3 of the New Jersey Employer-Employee Relations Act.