

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELLE,

Petitioner,

-and-

Docket No. SN-2002-57

OPEIU, LOCAL 32,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Roselle for a restraint of binding arbitration of a grievance filed by OPEIU, Local 32. The grievance challenges the discharge of an employee. The Commission concludes that since the Borough is a civil service community, any appeal of this discharge must be to the Merit System Board of the Department of Personnel. The Commission does not address severable procedural issues that may be arbitrable since those issues were not addressed by the parties.

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. 2003-12

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Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys  
(Joel G. Scharff, on the brief)

For the Respondent, Mark C. Rushfield, attorney, on the  
brief

DECISION

On May 13, 2002, the Borough of Roselle petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance challenging the discharge of an employee represented by OPEIU, Local 32.

The Borough has filed a brief. Local 32 has not. These facts appear.

The Borough is a civil service community. Terry Ann Fellner was employed as a recycling clerk in the department of public works. On September 20, 2001, Fellner was terminated after she failed to return to work after a medical leave of absence.

On February 11, 2002, OPEIU demanded arbitration of the discharge based on the Borough's assertion that Fellner was not a permanent career employee under civil service laws. This petition ensued.

The Borough filed a brief asserting that Fellner is a permanent career employee and that any appeal of her discharge must be made to the Merit System Board (MSB). Local 32 subsequently filed such an appeal. The appeal states that Fellner was not given a Preliminary or Final Notice of Disciplinary Action and did not have a hearing.

On May 24, 2002, Local 32 submitted a letter to us stating that it will not proceed to arbitration on the discharge but "will proceed with arbitration concerning the procedures followed by the Borough in attempting to effectuate her discharge." On June 7, Local 32 was given ten days to file a brief addressing the procedural issues. None was submitted.

Pursuant to N.J.S.A. 11A:2-14, the MSB reviews major disciplinary disputes, including terminations, arising in civil service jurisdictions. N.J.S.A. 34:13A-5.3 provides that binding arbitration may not replace any alternate statutory appeal procedure. Gloucester Tp. Municipal Utilities Auth., P.E.R.C. No. 97-135, 23 NJPER 341 (¶28156 1997). Accordingly, we restrain binding arbitration of Fellner's discharge.


Even if the merits of a discharge cannot be arbitrated, severable procedural issues may be arbitrable. See, e.g.,

Woodbridge Tp., P.E.R.C. No. 95-52, 21 NJPER 77 (¶26055 1995),  
aff'd sub nom Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div.  
1997); Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69  
(¶26049 1995). However, inasmuch as Local 32 has not identified  
the procedural issues it seeks to arbitrate, and the Borough has  
not addressed any procedural issues in its brief, we do not  
consider any possible procedural issues.

ORDER

The Borough of Roselle's request for a restraint of  
binding arbitration over the discharge of Terri Ann Fellner is  
granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato and  
Ricci voted in favor of this decisions. None opposed. Commissioner  
Sandman was not present.

DATED: July 25, 2002  
Trenton, New Jersey  
ISSUED: July 26, 2002