

P.E.R.C. NO. 2000-89

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-2000-79

UNION CITY EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Union City for a restraint of binding arbitration of a grievance filed by the Union City Employees Association. The grievance asserts that the City violated the parties' collective negotiations agreement and an employee's due process rights when it discharged her. The Commission concludes that this dispute cannot proceed to arbitration because the City is a civil service employer and major disciplinary disputes must be appealed to the Merit System Board.

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, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel; Adam S. Herman, on the
brief)

For the Respondent, Margulies, Wind, Herrington & Knopf,
P.C., attorneys (Sanford Browde, on the brief)

DECISION

On February 2, 2000, the City of Union City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Union City Employees Association. The grievance asserts that the City violated the parties' collective negotiations agreement and an employee's due process rights when it discharged her in November of 1998.

The parties have filed briefs and exhibits. These facts appear.

The Association represents white and blue collar employees, including full and part-time personnel holding

permanent, provisional and/or temporary civil service status. The City and the Association are parties to a collective negotiations agreement effective from January 1, 1995 through December 31, 1998. The parties have reached an agreement for a successor contract, but the agreement has not yet been executed. The grievance procedure ends in binding arbitration.

Claudette Geraud-Zaccardi was employed by the City in the classified title of Public Information Assistant. On June 2, 1999, the City issued a Final Notice of Disciplinary Action charging Geraud-Zaccardi with "Resignation not in good standing effective 10/29/98." On June 17, the Association advised the City that it believed Geraud-Zaccardi had been wrongfully terminated and that it intended to seek arbitration. On August 3, the Association demanded arbitration. On August 17, an arbitrator was appointed and an arbitration hearing was scheduled.

On September 17, 1999, the Association filed an appeal with the Merit System Board (MSB). In its appeal to the MSB, the Association acknowledged that it had made a procedural error in seeking arbitration rather than filing an appeal with the MSB. It asserted that there was no prejudice to the City since the City had participated in the arbitration selection process, although an arbitration hearing had not yet been held.

On October 12, 1999, the City moved to dismiss the MSB appeal as out of time, asserting that filing a demand for arbitration does not toll the time for filing an MSB appeal.

On November 9, 1999, the Association advised the arbitrator that it had filed an appeal with the MSB and asked the arbitrator to hold the arbitration in abeyance pending a determination from the MSB concerning jurisdiction.

On April 19, 2000, the MSB denied Geraud-Zaccardi's request for a hearing. It concluded that she had not filed a timely appeal and that the filing for arbitration did not toll the time for filing an MSB appeal.

The City asserts that the Association's appeal cannot proceed to arbitration because it has an alternate statutory appeal procedure at the MSB.

The Association originally asserted that the scope petition was moot because of the MSB appeal. However, on April 25, 2000, the Association requested a determination in this matter since the MSB had denied a hearing. The Association asserts that the City has acquiesced in the arbitration process by participating in the selection of an arbitrator and agreeing to a date for arbitration.

The City is a Civil Service community. 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.^{1/} Gloucester Tp. Municipal Utilities Auth., P.E.R.C. No. 97-135, 23 NJPER 341 (¶28156 1997). Any agreement the parties may have made to arbitrate major disciplinary disputes is not enforceable through binding arbitration. Ridgefield Park, 78 N.J. at 162. The employer's participation in the arbitration selection

^{1/} N.J.S.A. 34:13A-5.3 provides, in part:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under provisions of section 7 of P.L. 1968, c. 303 (C. 34:13A-5.3), other than public employees subject to discipline pursuant to R.S. 43:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. [Emphasis supplied].

process does not act as a waiver of its right to contest the legal arbitrability of the grievance through a scope proceeding. Scope petitions may generally be filed any time before the issuance of an arbitration award. Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983). Any waiver arguments would have to be made to the MSB or a reviewing court.

ORDER

The City's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commisioners Buchanan, Madonna, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Muscato was not present.

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000