

P.E.R.C. NO. 2000-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-2000-70

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 alleges that the City violated the parties' collective negotiations agreement when it suspended an employee without just cause. The Commission concludes that inasmuch as the City is a civil service employer, the employee has an alternate statutory appeal procedure before the Merit System Board to seek review of this suspension.

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

DECISION

On January 6, 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 alleges that the City violated the parties' collective negotiations agreement when it suspended an employee without just cause.

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

The City is a Civil Service community. The Merit System Board of the Department of Personnel reviews certain disciplinary

disputes arising in Civil Service jurisdictions. Suspensions and fines of more than five days may be appealed as of right to the Merit System Board.

The Association represents blue and white 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.

This case involves an employee, Charles Gultieri, who was suspended after the City's doctor concluded that his heart disease made him unable to perform the full duties of his laborer position. The City issued a Preliminary Notice of Disciplinary Action and suspended him with pay pending a hearing. At a hearing before the City's attorney, the employee presented a note from his own doctor stating that he could go back to work without restriction at any time. The union's request to have the employee examined by an independent doctor was refused. After a brief recess, the City's attorney announced that the employee would be suspended immediately without pay.

On November 5, 1999, the Association notified the City that a grievance would be filed. The City responded that the employee was unable to perform his duties and that he would not be reinstated.

On November 9, 1999, the Association demanded arbitration. The demand alleged that the employer violated the contract by suspending the employee "without just cause and in violation of due process." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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 arbitrator and/or the courts.

Thus, we do not consider the contractual arbitrability or merits of the grievance.

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). Appeal to the Merit System Board of a suspension of six days or more is such an appeal procedure. Accordingly, arbitration contesting the justness of this suspension must be restrained.

The Association argues that no Final Notice of Disciplinary Action was issued triggering an appeal right. However, N.J.A.C. 4A:2-2.8(b) provides that if an appointing authority fails to


provide the employee with a Final Notice of Disciplinary Action, an appeal may be made to the Merit System Board within a reasonable time. Therefore, the Association cannot contest the merits of the suspension through binding arbitration.

Town of Phillipsburg, P.E.R.C. No. 88-86, 14 NJPER 245 (¶19091 1988), is distinguishable. In that case, we permitted binding arbitration over the employer's placing an employee on unpaid leave for four days. There was no alternate statutory appeal mechanism that preempted binding arbitration over the dispute. Here, the employee has been suspended indefinitely and he has a right of review before the Merit System Board.

ORDER

The request of the City of Union City for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: April 27, 2000
Trenton, New Jersey
ISSUED: April 28, 2000