

P.E.R.C. NO. 98-121

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HACKENSACK,

Petitioner,

-and-

Docket No. SN-98-43

IUPCPE, LOCAL 911,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Hackensack for a restraint of binding arbitration initially demanded by RWDSU Local 29 on behalf of Craig Anderson, a sanitation worker. On December 22, IUPCPE Local 911 was certified as the new majority representative of the negotiations unit which represents sanitation workers. Accordingly, Local 911 appears on behalf of Anderson. The demand seeks arbitration of a 15-day suspension imposed on Anderson by the City. The City is a civil service jurisdiction. The Merit System Board reviews appeals of major disciplinary actions arising in Civil Service jurisdictions. Thus, the Commission concludes that any appeal of this 15-day suspension must be made 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, Wiss, Cooke & Santomauro, P.C.,  
attorneys (Raymond R. Wiss, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, P.C., attorneys  
(Robert C. Gifford, Jr., on the brief)

DECISION

On November 10, 1997, the City of Hackensack petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration initially demanded by RWDSU Local 29 on behalf of Craig Anderson, a sanitation worker. On December 22, IUPCPE, Local 911 was certified as the new majority representative of the negotiations unit which represents sanitation workers. Accordingly, Local 911 appears on behalf of Anderson. The demand seeks arbitration of a 15-day suspension imposed on Anderson by the City.

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

Local 911 represents non-supervisory blue collar employees in the City's Department of Public Works. Article 12 of the parties' collective negotiations agreement, entitled Grievance and Arbitration Procedure, provides, in part:

12.8 If the grievance is not settled by Step Three, the individual employee or the Union shall have the right within five (5) working days of receipt of the answer at Step Three, to pursue all legal remedies afforded by the provisions of the Civil Service Act and/or to submit such grievance to an arbitrator....

On July 25, 1997, Craig Anderson was served with a Preliminary Notice of Disciplinary Action charging him with conduct unbecoming a public employee.

On August 7, 1997, a hearing was conducted. On August 14, a Final Notice of Disciplinary Action was issued sustaining the charges and suspending Anderson for 15 work days. The final notice advised:

You have a right to appeal disciplinary actions: (a) suspension or fines of more than five days at one time; (b) suspensions or fines more than three times or for an aggregate of more than fifteen days in one calendar year; (c) disciplinary demotion; (d) removal or (e) resignation not in good standing. Your letter of appeal must be filed with the Merit System Board within 20 days of receipt of this form.

On August 15, 1997, the union advised the City's personnel director that it was appealing the suspension to arbitration and requested that the suspension be held in abeyance until after the arbitration ruling. 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. We also do not consider the City's arguments concerning the timeliness of any appeal to the Merit System Board or Local 911's arguments concerning progressive discipline.

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].

The City is a Civil Service jurisdiction. The Merit System Board, formerly the Civil Service Commission, reviews appeals of major disciplinary actions arising in Civil Service jurisdictions. Suspensions of more than five days are considered major discipline. Section 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 (128156 1997). We therefore restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998  
Trenton, New Jersey  
ISSUED: March 27, 1998