

P.E.R.C. NO. 85-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-85-13

WEST ORANGE PBA LOCAL 25,

Respondent.

SYNOPSIS

The Public Employment Relations Commission refused to restrain binding arbitration of a grievance that West Orange PBA Local 25 filed against the Township of West Orange. The grievance requested payment of an employee's doctors' bills for treatment of work-incurred injuries. The grievance further alleged that the employee secured these doctors' services because treatment from doctors on the employer's self-insured, workers' compensation medical panel was not timely offered.

P.E.R.C. NO. 85-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-85-13

WEST ORANGE PBA LOCAL 25,

Respondent.

Appearances:

For the Petitioner, Marvin Corwick, Business
Administrator

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(David Solomon, of Counsel)

DECISION AND ORDER

On September 10, 1984, the Township of West Orange ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township seeks a restraint of binding arbitration of a grievance that West Orange PBA Local 25 ("Local 25") has filed against it. The grievance requests payment of an employee's doctors' bills.

The parties have filed statements and documents. The following facts appear.

Local 25 is the majority representative of the Township's police officers below the rank of sergeant. The Township and Local 25 entered a collective negotiations agreement effective from January 1, 1983 through January 31, 1984. That agreement contains a grievance procedure which ends in binding arbitration.

Timothy Sharkey is a police officer. He suffered a work-related injury. On January 26, 1984, he was treated in an emergency room and admitted to St. Barnabas Hospital where he remained until February 9, 1984.

The Township maintains a panel of doctors for its self-insured workers' compensation program. That panel contains more than one specialist in each category, and employees not satisfied with one doctor in a category may request another. Some members of that panel -- specifically Doctors Decter and Schmidt -- and some doctors referred by that panel -- specifically Doctors Gordon, Tilli, and Leeds -- examined Sharkey; the Township has agreed to pay their bills. In addition, some doctors not on that panel -- specifically Doctors O'Connor and Como -- examined Sharkey; the Township refused to pay their bills which apparently exceed \$6,000. Sharkey also refused a follow-up visit by Doctor Leeds.

On May 4, 1984, Local 25 filed a grievance on behalf of Sharkey. That grievance asserts that the refusal to pay Sharkey's bills from Doctors O'Connor and Como violates the injury leave provisions of the parties' agreement. It specifically asserts that Sharkey only secured his own medical assistance after he had stayed in St. Barnabas Hospital for 15 days without a doctor from the Township's medical panel visiting him.

The Township denied this grievance; Local 25 demanded binding arbitration; and the instant petition ensued.

The Township asserts that it has a non-negotiable managerial prerogative to choose the doctors and hospitals it uses in a self-insured workers' compensation program. Without this right, it contends, it could not control the cost of its self-insurance program.

Local 25 does not generally challenge the Township's asserted right to choose the doctors and hospital it uses in a self-insurance program. It asserts that the physician the Township designated did not show up to treat Sharkey and that the officer only consulted another doctor after waiting several hours for treatment. Local 25 specifically seeks to arbitrate whether the Township complied with its own policy and provided prompt medical attention or whether the employee was justified in securing his own treatment.

At the outset of our analysis we stress the narrow boundaries of the Commission's scope of negotiations jurisdiction. As the Supreme Court stated in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978):

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.

See also In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, we will not consider the merits of Local 25's grievance or any contractual defenses the Township may have.^{1/}

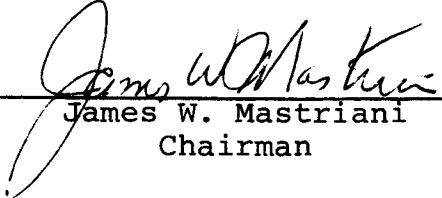
Under all the circumstances of this case, we believe the dispute is arbitrable. For purposes of this decision, we will accept Local 25's concession that the Township has a general right to choose the doctors and hospitals it will use in a self-insurance program. Given that concession, the narrow dispute in this case is whether an employer can obligate itself to pay for other doctors' bills if the grievant can prove that treatment from the employer's medical panel was not timely rendered. We know of no statute or regulation which would preempt arbitration of this narrow dispute. Further, applying the negotiability and balancing tests of Local 195, IFPTE v. State, 88 N.J. 392, 403-404 (1982), we believe this narrow dispute intimately and directly affects an employee's health and will not significantly interfere with the determination of governmental policy. Accordingly, we will deny the Township's request for a restraint of binding arbitration.

^{1/} We notice a discrepancy between the grievance which asserts that Sharkey waited 15 days for treatment from the Township's medical panel and Local 25's statement which asserts he waited several hours. Because we do not review the merits of a grievance, we will not pursue this discrepancy further.

ORDER

The request of the Township of West Orange for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioner Butch, Graves, Hipp, Newbaker and Wenzler voted in favor of this decision. None opposed. Commissioner Suskin was not present at the time of the vote.

DATED: Trenton, New Jersey
December 19, 1984
ISSUED: December 21, 1984