

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN MUNICIPAL
UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-2001-13

UTILITY WORKERS UNION OF AMERICA,
LOCAL 534-B, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the North Bergen Municipal Utilities Authority for a restraint of binding arbitration. The Authority seeks to restrain the Utility Workers Union of America, Local 534-B, AFL-CIO from arbitrating the discharge of Nicholas Vamvakidis. An appeal of the discharge has been filed with the Merit System Board. Civil Service statutes provide a right to appeal major disciplinary actions to the Merit System Board. N.J.S.A. 34:13A-5.3 provides that binding arbitration may not replace any alternate statutory appeal procedure. The Commission therefore restrains arbitration.

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. 2001-34

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Appearances:

For the Petitioner, Weiner Lesniak, attorneys
(Mark A. Tabakin, on the brief)

DECISION

On September 29, 2000, the North Bergen Municipal Utilities Authority petitioned for a scope of negotiations determination. The Authority seeks to restrain the Utility Workers Union of America, Local 534-B, AFL-CIO from arbitrating the discharge of Nicholas Vamvakidis.

The Authority filed a brief, certification and exhibits. The Union did not file a brief. These facts appear.

The Union represents blue collar employees in the wastewater treatment plant. The Authority is a Civil Service employer. The Authority and the Union are parties to a collective negotiations agreement effective from January 1, 1998 through December 31, 2000. The grievance procedure ends in binding arbitration.

Nicholas Vamvakidis is a laborer in the Authority's wastewater treatment plant. He was terminated for excessive absenteeism and abuse of sick time.

On January 11, 2000, the Union requested arbitration contesting the allegedly unjust discharge. On February 24, Vamvakidis filed an appeal of his discharge with the Merit System Board. A hearing in that matter is scheduled for March 2001. This petition ensued.

The Authority seeks a restraint of arbitration. It asserts that the sole remedy in this matter is an appeal to the Merit System Board.

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, 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

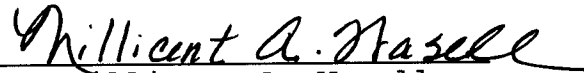
appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the 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].

Civil Service statutes provide a right to appeal major disciplinary actions to the Merit System Board. 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). We therefore restrain arbitration.

ORDER

The request of the North Bergen Municipal Utilities Authority 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: December 14, 2000
Trenton, New Jersey
ISSUED: December 15, 2000