

P.E.R.C. NO. 2004-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2003-68

AFSCME, COUNCIL 73, LOCAL 2281,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Trenton for a restraint of binding arbitration of a portion of a grievance filed by AFSCME, Council 73, Local 2281. Among other things, the grievance seeks to have the City discipline an employee who brought charges against a non-unit supervisor. The Commission holds that a union may not negotiate or use a disciplinary review procedure to challenge discipline imposed on non-unit employees. The Commission restrains arbitration over that portion of the grievance which seeks to have the City discipline a non-unit employee.

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, Laufer, Knapp, Torzewski & Dalena,  
LLC, attorneys (Stephen E. Trimboli, on the brief)

DECISION

On June 2, 2003, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a portion of a grievance filed by AFSCME, Council 73, Local 2281. The grievance seeks to have the City reimburse an employee for legal fees incurred to defend against charges filed by a subordinate, reimburse all employees who lost time from work to attend hearings, and discipline the subordinate employee who brought the charges.

The City has filed a brief and exhibits. AFSCME did not file a brief. These facts appear.

AFSCME represents civilian supervisory employees. The parties' collective negotiations agreement is effective from

January 1, 1999 through December 31, 2001. The grievance procedure ends in binding arbitration.

John R. Cassarini, Jr. is a supervising engineer employed by the City. Cassarini sought legal representation from the City to defend himself when a subordinate employee brought charges against him. When the City did not provide legal representation, Cassarini sought representation on his own. In November 2001, the case was dismissed in Trenton municipal court and all charges were dropped.

On June 21, 2002, AFSCME filed a grievance seeking reimbursement to Cassarini for all legal fees and court costs; compensation to him and other City employees for time off from work to attend hearings, and disciplinary action against the subordinate for "workplace harassment." The subordinate employee is in a different negotiations unit. The grievance was denied.

On December 12, 2002, AFSCME demanded arbitration. This petition ensued. The petition seeks a restraint of arbitration only over the portion of the grievance asking the City to discipline the subordinate employee.

On September 2, 2003, the City submitted a copy of the arbitrator's award issued on August 6, 2003. The arbitration proceeded on the issues of legal representation, legal fees, and compensation reimbursement, but the arbitrator did not address

the issue of disciplining Cassarini's subordinate for workplace harassment. That issue is still outstanding.

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.  
[Id. at 154]

We thus do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

Under Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-132, 13 NJPER 352 (¶18143 1987), aff'd in pert. pt., rev'd in part, NJPER Supp.2d 188 (¶166 App. Div. 1988), a union may not negotiate or use a disciplinary review procedure to challenge discipline imposed on non-unit employees. We have no basis to distinguish this precedent and we therefore restrain binding arbitration over the portion of the grievance that seeks to have the City discipline a non-unit employee.

ORDER

The request of the City of Trenton for a restraint of binding arbitration is granted to the extent the grievance seeks to have the City discipline a non-unit employee.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: September 25, 2003  
Trenton, New Jersey  
ISSUED: September 25, 2003