

P.E.R.C. NO. 2007-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2006-065

P.B.A. LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of New Jersey Transit Corporation for reconsideration of P.E.R.C. No. 2006-89, 32 NJPER 168 (¶76 2006). In that decision, the Commission declined to restrain binding arbitration of a grievance filed by P.B.A. Local 304. The Commission concluded that while an employer has a prerogative in the abstract to conduct conferences with employees about their sick leave use, arbitration will be permitted when the record indicates that counseling conferences were in fact a form of discipline imposed for a sick leave violation already found. The Commission concludes that no extraordinary circumstances have been presented to warrant reconsideration.

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, Zulima V. Farber, Attorney General of New Jersey (Sharon Price-Cates, Deputy Attorney General, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Merick H. Limsky, on the brief)

DECISION

On June 9, 2006, New Jersey Transit Corporation moved for reconsideration of P.E.R.C. No. 2006-89, 32 NJPER 168 (¶76 2006). In that decision, we declined to restrain binding arbitration of a grievance filed by P.B.A. Local 304. The PBA asserted that the employer's continuing enforcement of its excessive absenteeism policy violated the sick leave provisions of the parties' collective negotiations agreement as interpreted in a recent grievance arbitration award. We concluded that while an employer has a prerogative in the abstract to conduct conferences with employees about their sick leave use, arbitration will be permitted when the record indicates that counseling conferences

were in fact a form of discipline imposed for a sick leave violation already found. In this case, an arbitrator had already found that counseling was being used as an automatic form of discipline even if negotiated sick leave benefits were being properly used. We held that the PBA's contention that the arbitration award is being ignored and employees are still being improperly disciplined may be reviewed through arbitration.

Reconsideration will be granted only under extraordinary circumstances. N.J.A.C. 19:13-3.11; 14-8.4. Such circumstances are not present here.

The employer asserts that we impermissibly went beyond the four corners of the PBA's grievance and demand for arbitration by considering the PBA's representations in this scope of negotiations proceeding and the merits of the arbitrator's award.

Our task in a scope of negotiations proceeding is to determine the legal arbitrability of the issue a union seeks to submit to binding arbitration. 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.

We therefore look to the grievance, demand for arbitration, and parties' briefs and supporting documents to frame the dispute. The question of whether a grievance or demand raises a particular contractual claim presents a contractual arbitrability question rather than a precondition to a legal arbitrability determination. Neptune Tp. Bd. of Ed., P.E.R.C. No. 93-36, 19 NJPER 2 (¶24001 1992); City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988).

In addition, contrary to the employer's assertion, we did not consider the merits of the arbitrator's award. That issue is currently before the Appellate Division. Nor did we find that the employer continued to counsel employees in a disciplinary manner after that award issued. That is the PBA's contention and we simply permitted the PBA to make its case to a grievance arbitrator.

Finally, we reject the employer's contention that we should not have requested a copy of any opinion, order or transcript concerning Judge Klein's decision confirming the award that the PBA now contends was ignored. While our jurisdiction does not extend to deciding the merits of the matter sought to be arbitrated, we can consider any documents or developments that identify the claim sought to be arbitrated. In this case, the

claim that the employer is ignoring an arbitration award permits us to consider the existence, but not the merits, of that award and any court decision confirming it.^{1/} Whether the PBA's claim was adequately presented in the early steps of the grievance procedure and whether the employer, in fact, violated the contract by continuing to impose an automatic form of discipline are questions for the arbitrator. Ridgefield Park.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: August 10, 2006

Trenton, New Jersey

^{1/} A transcript of the Judge's decision has not been provided.