

P.E.R.C. NO. 2008-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-2007-075

CAMDEN COUNCIL #10, NJCSA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Camden for a restraint of binding arbitration of a grievance filed by Camden Council #10, NJCSA. The grievance alleges that the County violated the parties' collective negotiations agreement by requiring an employee to move into the County even though he has lived outside the County for over 30 years and is not covered by the County's subsequently adopted residency policy. The Commission finds that this dispute is not about the County's right to establish a residency policy, nor is it a claim that an employee or group of employees should be exempt from an existing policy. The Commission holds that this case involves a very narrow dispute over whether the County's residency policy applies to a particular employee who was hired before the policy was adopted and who had allegedly lived outside the County at all times since. The Commission holds this narrow dispute to be legally arbitrable.

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, Deborah Silverman Katz, County Counsel (Catherine Binowski, Assistant County Counsel, on the brief)

For the Respondent, Spear Wilderman, attorneys (James Katz, on the brief)

DECISION

On June 5, 2007, the County of Camden petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Camden Council #10, NJCSA. The grievance alleges that the County violated the parties' collective negotiations agreement by requiring an employee to move into the County even though he has lived outside the County for over 30 years and is not covered by the County's subsequently adopted residency policy. We find this narrow dispute to be legally arbitrable.

The parties have filed briefs and exhibits. The County has filed the certification of Frank Cirii, its Human Resources

Director. Council #10 has filed the certifications of its president, Karl Walko, and the grievant, Stephen Lynch. These facts appear.

Council #10 represents employees at the Camden County Resource Center and other County employees. The parties' collective negotiations agreement is effective from January 1, 2003 to December 31, 2007. The grievance procedure ends in binding arbitration.

Article XXIV is entitled Equal Treatment. It provides that no employees shall be discriminated against; employees have the right to join a union without reprisal; proposed new rules or modifications of existing rules shall be negotiated with the union before establishment; and all employees shall be treated equitably under the contract.

Article XXIX is entitled Managements Rights. It provides, in part, that the County may suspend, demote, discharge, or take any other appropriate disciplinary action for just cause.

N.J.S.A. 40A:9-1.3 authorizes governing bodies to enact a residency resolution or ordinance that requires employees employed after June 30, 1978 to be bona fide residents.

In 1981, the County Freeholders adopted a residency resolution requiring all employees employed after that date to be bona fide residents of the County. In 1993, the Freeholders passed another resolution providing that any employees who were

not residents as of the date of the resolution could maintain their current residency, but going forward, County residents could not take up residence outside the County. In 1996, the Freeholders exempted certain law enforcement personnel from the residency requirement. In 1982 and 2006, the County's Human Resources Department issued two residency policies.

When Lynch was hired by the County in 1977, he lived in Philadelphia and listed a Philadelphia street address. At that time, Camden County had not yet adopted a residency resolution. Lynch was laid off for one day in 1983, an action that was frequently taken with federally-funded positions due to delays in funding, but all of his employment entitlements such as vacation, longevity and other benefits are treated as if he has been continuously employed since 1977. The County asserts that since 1980, Lynch has submitted change of address forms, W-4 forms, and enrollment forms and cards listing a Camden County address. Lynch, however, states that those addresses were never meant to be his permanent domicile, but "always a mailing address of convenience." He states that he did not move out of the County in 2006, but completed a form at that time listing a Philadelphia street address because the County asked for an address rather than a post office box.

On August 24, 2006, the County wrote to Lynch insisting that he move into the County within a year or be terminated. On

September 14, Lynch replied and stressed that he was hired in 1977 and was thus exempt from the policy.

On January 3, 2007, Council #10 filed a grievance alleging that the County's residency policy does not require employees in Lynch's circumstances to move into the County.

The County Administrator denied the grievance and Council #10 demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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]

Thus, we do not consider the merits of the grievance or any contractual defenses the parties may have. We specifically do not resolve the central factual issue underlying this dispute: whether, as Lynch asserts, he has continuously lived in Philadelphia since he was hired.

We begin by clarifying what this dispute is not about. It is not about the County's right to enact a residency policy

pursuant to the enabling statute or a managerial prerogative. Contrast Hudson Cty., P.E.R.C. No. 80-103, 6 NJPER 101 (¶11052 1980). Nor is it about a claim that an employee or group of employees should be exempt from an existing residency policy. Contrast City of Newark and PBA Local No. 3, 272 N.J. Super. 31 (App. Div. 1994), certif. den. 137 N.J. 315 (1994) (city did not have to negotiate before applying residency ordinance to I.D. officers who were not exempt from ordinance); City of Trenton v. Local #2286 and AFSCME Council #73, 29 NJPER 301 (¶92 App. Div. 2003), rev'g P.E.R.C. No. 2001-67, 27 NJPER 234 (¶32081 2001) (employee could not arbitrate grievance claiming that city should exempt residents in a title because it hired non-residents into the title pursuant to a statutory exemption).

This case instead involves a very narrow dispute over whether the County's residency policy applies to a particular employee who was hired before the initial policy was adopted and who has allegedly lived outside the County at all times since.^{1/} The County does not argue that the policy would apply to Lynch if he has in fact lived outside the County since he was hired. It instead argues that documents that Lynch submitted to the County indicate that he lived in the County since at least January 1980.

^{1/} Council #10 argues that Lynch should be able to challenge his termination, but it does not appear that he has yet been terminated.

The County's residency policy was established pursuant to enabling legislation. N.J.S.A. 40A:9-1.3. An arbitrator can answer the factual question of whether Lynch has lived outside the County at all times since his initial date of hire in 1977 and thus is not covered by the subsequently adopted resolutions. Arbitration over this narrow issue would not interfere with the County's right to establish and apply its residency policy to all employees covered by the terms of that policy.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: September 27, 2007

Trenton, New Jersey