

P.E.R.C. NO. 2008-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT,

Petitioner,

-and-

Docket No. SN-2008-017

TEAMSTERS LOCAL UNION NO. 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Point Pleasant for a restraint of binding arbitration of a grievance filed by Teamsters Local Union No. 469. The grievance contests the approval by the New Jersey Department of Personnel of the employer's layoff plan. The Commission denies the request for a restraint of binding arbitration of a second grievance. That grievance asserts that an employee has been harassed and subjected to a hostile work environment. The Commission determines that whether the Borough submitted its layoff plan to DOP in bad faith falls under DOP's jurisdiction. As for the second grievance, contractual clauses protecting employees from harassing or abusive conduct are mandatorily negotiable and enforceable through binding 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.

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Appearances:

For the Petitioner, Dasti, Murphy, McGuckin, Ulaky,  
Cherkos & Connors, P.C., attorneys (Jerry J. Dasti, on  
the brief)

For the Respondent, Timothy R. Hott, P.C., attorney, on  
the brief

DECISION

On September 21, 2007, the Borough of Point Pleasant petitioned for a scope of negotiations determination. The Borough seeks restraints of binding arbitration of two grievances filed by Teamsters Local Union No. 469. The first grievance contests the approval by the New Jersey Department of Personnel ("DOP") of the employer's layoff plan and the second grievance asserts that the employee has been harassed and subjected to a hostile work environment. We restrain arbitration of the first grievance, but not the second.

The parties have filed briefs and exhibits. These facts are not in dispute.

Local 469 represents all full-time, permanent clerical employees. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2007. The grievance procedure ends in binding arbitration.

N.J.A.C. 4A:8-1.4 requires Merit System jurisdictions to submit layoff plans to DOP for approval. The Borough submitted a proposed layoff plan advising that a reduction from full-time status to part-time status for two clerks was necessary to meet the restrictions of the Municipal Budget CAP law. On June 5, 2007, DOP found the Borough to be in compliance with all required procedures and thus approved the plan.

One of the two clerks, Judith Stoddard, works in the Tax Collector's office. On June 6, 2007, the Municipal Clerk/Administrator gave her an Individual Notice of Layoff or Demotion advising that her work hours were being reduced from full-time to part-time effective July 21. A copy of the notice was sent to DOP so it could determine her seniority, lateral displacement, demotional, and special re-employment rights.

On June 11, 2007, Stoddard filed a grievance protesting her layoff as unjust. Local 469 has submitted a second grievance, dated July 2, 2007, alleging that Stoddard's supervisor "has been harassing me and verbally abusing me on a daily basis and I don't want to work in a hostile work environment."

On July 20, 2007, DOP's Acting Manager of Local Human Resources Management wrote Stoddard a letter informing her that her layoff had been recorded and listing her demotional and re-employment rights. The letter stated that she could appeal to DOP on the issue of whether the appointing authority had acted in good faith in instituting its layoff plan.

On September 4, 2007, Local 469 demanded arbitration. The statement of the grievances to be arbitrated was "layoff and recall rights/hostile work environment." 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 these grievances or any contractual defenses the employer may have.

With respect to the layoff issue, the Borough argues that any challenge to the contested layoff must be made to DOP and Local 469 responds that the process of obtaining DOP approval for

a layoff was a pretext for a Borough supervisor to preserve her daughter's part-time job while favoring non-union employees.<sup>1/</sup>

With respect to the hostile environment issue, the parties disagree over whether that issue has been properly grieved.

We restrain arbitration over the layoff claim. The sole question that Local 469 seeks to arbitrate is whether the Borough submitted its layoff plan to DOP in bad faith. That question falls within DOP's jurisdiction to review "good faith appeals" alleging that layoffs were made for reasons other than economy, efficiency or other related reasons. N.J.A.C. 4A:8-2.6(a)1; 27 N.J.R. 1968 (DOP considers a demotion in the form of a reduction in hours to be a layoff for Merit System purposes). That question must be answered by DOP, not an arbitrator.

As for the second grievance, contractual clauses protecting employees from harassing or abusive conduct are mandatorily negotiable and enforceable through binding grievance arbitration. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (¶25116 1994). The Borough has asserted that a harassment grievance was never filed. Whether the grievant

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<sup>1/</sup> Local 469 also filed an unfair practice charge (CO-2008-151) based on its belief that the reduction/elimination of Stoddard's job, under the pretext of economic efficiency, was intended to reduce the number of employees represented by the union and to protect the job of the supervisor's daughter whose position is not represented by the union.

properly filed such a claim is a matter of contractual arbitrability for the arbitrator to consider. Ridgefield Park.

ORDER

The request of the Borough of Point Pleasant for a restraint of binding arbitration over the layoff claim is granted. The request of the Borough for a restraint of arbitration over the hostile environment claim is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: February 28, 2008  
Trenton, New Jersey