

P.E.R.C. NO. 2015-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2012-010

UNION OF RUTGERS ADMINISTRATORS
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Rutgers, The State University of New Jersey for a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators, American Federation of Teachers, Local 1766, AFL-CIO. The grievance challenges the termination of a unit member. The Commission, in P.E.R.C. No. 2013-22, 39 NJPER 187 (¶59 2012), initially denied restraint of arbitration without prejudice in this case for the arbitrator to make the threshold determination of whether the unit member's separation was a disciplinary action or a layoff for economic reasons. Finding that the arbitrator determined that the separation was a disciplinary discharge, the Commission holds that the grievance is mandatorily negotiable and 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, David A. Cohen Associate Vice
President and Senior Counsel, Labor and Employment
(Sarah A. Luke, Senior Assistant General Counsel, of
counsel)

For the Respondent, Weissman & Mintz, LLC, attorneys
(Ira W. Mintz, of counsel)

DECISION

In P.E.R.C. No. 2013-22, 39 NJPER 187 (¶59 2012) the
Commission denied, without prejudice, the request of Rutgers, The
State University of New Jersey for a restraint of binding
arbitration of a grievance filed by the Union of Rutgers
Administrators, American Federation of Teachers, Local 1766, AFL-
CIO (URA-AFT). The grievance challenges the layoff/termination
of a Development Specialist I (DS I) in Rutgers' Office of
Development without just cause. The pertinent facts and the
parties arguments are set forth in P.E.R.C. No. 2013-22.

The Commission concluded that:

[T]here is a factual dispute as to whether the grievant's termination was a layoff or a disciplinary termination. Due to this dispute, we cannot determine at this stage whether there is a legally arbitrable disciplinary dispute, or a non-negotiable decision to effectuate an economic layoff that would not be subject to arbitration.

[39 NJPER at 189-190]

Noting that neither party had made a request for an evidentiary hearing in the scope of negotiations proceeding, the Commission held that the arbitrator could determine whether the employee's termination was disciplinary or an economic layoff.

The following order was issued:

The request of Rutgers, the State University of New Jersey for a restraint of binding arbitration is denied without prejudice. In the event the arbitrator sustains the grievance, Rutgers may file a request, within 90 days after receipt of the arbitrator's award, that the Commission determine, based upon the arbitrator's finding of facts, whether the grievant's separation was a disciplinary action, subject to review through binding arbitration, or the exercise of a non-arbitrable managerial prerogative to abolish for economic or organizational reasons, the DS-I position held by the grievant.

[39 NJPER at 190].

After two days of hearings, and the submission of post-hearing briefs, on March 18, 2014, an arbitrator issued a 61-page written award with 88 numbered findings of fact, recitations of the parties arguments, evaluation of testimony and the

arbitrator's analysis. The award, which has been submitted to us, sustains the grievance. It states:

- The grievant's separation from employment was not motivated by the employer's desire to eliminate the grievant's position for economic or organizational reasons.
- The grievant's separation from employment was a disciplinary discharge.
- The University did not have just cause to discharge the grievant.
- The University was directed to reinstate the grievant to her former or a substantially equivalent position with back pay less interim earnings received.^{1/}

On June 16, 2014, Rutgers filed an application to have the Commission declare that the subject of the grievance is not mandatorily negotiable, supported by a brief and exhibits. The URA-AFT has filed a responsive brief and Rutgers has submitted a letter in reply.

After reviewing the parties' arguments, in light of the arbitrator's factual determinations, we deny Rutgers' application for a declaration that the subject of the grievance was not mandatorily negotiable and therefore not arbitrable.

In particular we decline to overturn or modify the arbitrator's findings of fact. While Rutgers is correct that

^{1/} The arbitrator retained jurisdiction over any disputes concerning the implementation of the remedy.

N.J.S.A. 52:14B-10 (cited by URA-AFT) applies to an agency's review of the credibility determinations of an administrative hearing officer, not an arbitrator, whatever the forum, review of a grievance arbitrator's findings of fact are even more limited. See Township of Wyckoff v. PBA Local 261, 409 N.J. Super. 344 (App. Div. 2009) and cases cited therein.

Rutgers also argues that the arbitrator's award interferes with its ability to abolish the position that the grievant held. Assuming arguendo, that Rutgers did abolish that job, the arbitrator's remedy did not impair Rutgers ability to do so, as the order directed that Rutgers reinstate her either to her former position or a substantially equivalent one.

ORDER

The scope of negotiations petition is dismissed with prejudice.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Wall voted in favor of this decision. None opposed. Commissioner Voos recused herself. Commissioners Bonanni and Jones were not present.

ISSUED: January 29, 2015

Trenton, New Jersey