

P.E.R.C. NO. 2019-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOUSING AUTHORITY OF THE CITY OF
ELIZABETH,

Petitioner,

-and-

Docket No. SN-2019-018

IBT LOCAL 966,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Housing Authority of the City of Elizabeth for a restraint of binding arbitration sought by the International Brotherhood of Teamsters, Local 966. Local 966 seeks to arbitrate a laborer's termination. The Housing Authority is a civil service jurisdiction. The Commission restrains arbitration because appeals of major disciplinary actions including terminations in local civil service jurisdictions must be made to the Civil Service Commission.

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, Gibbons P.C., attorneys (John C. Romeo, of counsel and on the brief; Timothy D. Tremba, of counsel and on the brief)

For the Respondent, Cohen Weiss & Simon, LLP, attorneys (Cristina Gallo, of counsel)

DECISION

On September 10, 2018, the Housing Authority of the City of Elizabeth (City) filed for a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local 966 (Local 966). The grievance alleges that the City violated the parties' collective negotiations agreement (CNA) when it terminated a laborer based on the City's assertion that he had taken an unauthorized leave of absence. Because major discipline of employees in Civil Service jurisdictions may not be reviewed through binding arbitration, we restrain arbitration.

The City has filed a brief and exhibits. Local 966 did not oppose the City's scope petition. These facts appear.

The City is a Civil Service jurisdiction. Local 966 is the majority representative of the City's maintenance employees. The parties' CNA has a term of July 1, 2016 to June 30, 2018. Local 966's grievance alleges that the City violated, inter alia, Article 14 "Grievance Procedures" when it terminated the grievant without just cause. The grievance procedure ends in binding arbitration.

On June 7, 2017, the grievant began an unauthorized leave of absence. On June 16, the City served the grievant with a Preliminary Notice of Disciplinary Action, terminating him for the unauthorized leave of absence. On June 26, a hearing was held regarding his termination. Local 966 then filed a grievance disputing his termination. On or about June 28, the City issued a Final Notice of Disciplinary Action. By letter dated March 20, 2018 to the New Jersey State Board of Mediation, Local 966 requested arbitration of the grievance for "unjust termination". The arbitrator then issued a Notice of Hearing for September 13, 2018. This petition ensued.

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.

Thus, we do not consider the merits of the grievance or any contractual defenses the City may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

A subject is preempted from arbitration where a statute or regulation "expressly, specifically and comprehensively" sets the term and condition of employment or provides another procedure

for resolving disputes that must be used. See Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 45-46 (1982).

The City argues that the grievance challenges a disciplinary termination of a Civil Service employee that can only be reviewed by the Civil Service Commission (CSC).

The issue before us is whether this matter is preempted by Civil Service laws and regulations. We find that it is. The City is a Civil Service jurisdiction. The CSC reviews appeals of major disciplinary actions imposed in Civil Service jurisdictions. N.J.S.A. 11A:2-14; see also City of Passaic, P.E.R.C. No. 2011-58, 37 NJPER 15 (¶5 2011). Terminations are major discipline. See N.J.S.A. 11A:2-6; N.J.A.C. 4A:2-2.2. N.J.S.A. 34:13A-5.3 provides that binding arbitration may not replace any alternate statutory appeal procedure. Thus, the grievant's termination is not legally arbitrable or mandatorily negotiable because it is preempted by Civil Service laws and regulations. North Bergen MUA, P.E.R.C. No. 2001-34, 27 NJPER 39 (¶32020 2000); Roselle Bor., P.E.R.C. No. 2003-12, 28 NJPER 347 (¶33123 2002).

ORDER

The request of the Housing Authority of the City of
Elizabeth for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Boudreau, Jones, Papero and Voos
voted in favor of this decision. None opposed. Commissioner
Bonanni was not present.

ISSUED: February 28, 2019

Trenton, New Jersey