

P.E.R.C. NO. 97-154

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY LIBRARY,

Petitioner,

-and-

Docket No. SN-97-56

OPEIU LOCAL 32,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Ocean County Library for a restraint of binding arbitration of a grievance filed by OPEIU Local 32. The grievance contests a one-day and a two-day suspension without pay imposed upon a supervising librarian. The Commission finds that suspensions of five days or less constitute minor discipline and this employer could have legally agreed to negotiate procedures providing for binding arbitration of these minor disciplinary disputes.

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, Citta, Holzapfel, Millard, Zabarsky & Leahey, attorneys (James W. Holzapfel, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, attorneys (Kevin P. McGovern, of counsel)

DECISION AND ORDER

On December 18, 1996, the Ocean County Library petitioned for a scope of negotiations determination. The Library seeks a restraint of binding arbitration of a grievance filed by OPEIU Local 32. The grievance contests a one-day and a two-day suspension without pay imposed upon supervising librarian Emily Holman.

The parties have filed exhibits and briefs. These facts appear.

Local 32 represents the Library's full-time librarians. The parties entered into a collective negotiations agreement effective from April 1, 1994 through March 31, 1997. The negotiated grievance procedure ends in binding arbitration of contractual disputes. Non-contractual grievances may not be submitted to binding arbitration. Article IV is entitled Management Rights.

Subsection A, paragraph 3, provides that the employer retains the right "[t]o reprimand, suspend, discharge or otherwise discipline employees. Article X is entitled Employee Rights and Representation. It provides, in part:

No employee shall be formally disciplined or formally reprimanded or reduced in compensation without just cause.

Emily Holman holds the civil service title of supervising librarian. On June 5, 1997, Holman received an unpaid one-day suspension. On June 26, she received an unpaid two-day suspension.

Local 32 filed grievances challenging both suspensions. On August 20, 1996, the Library Commission affirmed the recommendation of a hearing committee denying the grievances.

On October 11, 1996, Local 32 demanded arbitration concerning the minor disciplinary suspensions. This petition ensued.

The Library argues that since the contract does not provide for grievances of minor disciplinary disputes, the grievance is non-contractual and cannot be arbitrated. Local 32 counters that the grievance invokes the just cause provisions of Article X and therefore may be arbitrated. Further, it argues that the Library's contentions raise merely contractual defenses outside the Commission's jurisdiction to determine.

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.

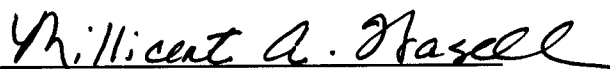
Thus, we cannot consider the contractual arbitrability or merits of the grievances.

N.J.S.A. 34:13A-5.3, as amended by P.L. 1996, c.115, states that negotiated grievance procedures may provide for binding arbitration of disputes involving the minor discipline of any public employee except State troopers. Suspensions of five days or less constitute minor discipline. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997). Accordingly, we conclude that this employer could have legally agreed to negotiate procedures providing for binding arbitration of these minor disciplinary disputes. The employer's argument that it did not so agree is beyond our jurisdiction under Ridgefield Park.

ORDER

The request of the Ocean County Library for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997
Trenton, New Jersey
ISSUED: June 20, 1997