

P.E.R.C. NO. 94-84

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-94-50

CAMDEN COUNCIL NO. 10,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Camden Council No. 10 against the County of Camden. The grievance asserts that the employer violated the parties' collective negotiations agreement when it charged sick time to employees who were made sick when their work site was painted during business hours. The parties dispute whether the affected employees are County or judiciary employees. The Commission need not resolve that dispute since either way it would decline to restrain binding arbitration. Assuming that the employees are County employees, the dispute predominately involves a safety and health grievance and is well within the scope of negotiations. Assuming that the employees are judiciary employees, the Commission would be without power to issue a decision binding either the employer or the employees.

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Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray, of counsel)

For the Respondent, Tomar, Simonoff, Adourian & O'Brien,  
attorneys (Mary L. Crangle, of counsel)

DECISION AND ORDER

On November 16, 1993, 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 No. 10. The grievance asserts that the employer violated the parties' collective negotiations agreement when it charged sick time to employees who were made sick when their work site was painted during business hours.

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

Council No. 10 represents about 1500 employees, including probation department employees. The parties entered into a

collective negotiations agreement effective from January 1, 1989 to December 31, 1991. That agreement contains an article entitled Safety and Health. Section A provides:

The employer shall at all times maintain safe and healthful working conditions, and will provide employees with any wearing apparel, tools, or devices reasonably necessary in order to insure their safety and health.

The grievance procedure ends in binding arbitration, except that the Assignment Judge has the final power to decide grievances involving Court employees.

On January 8, 1992, Council No. 10 filed a grievance on behalf of 12 probation department employees. The offices of that department are in the MidAtlantic Bank Building in Camden. The grievance alleged that when those offices were painted during business hours on November 19 and 22, 1991, the fumes caused the employees to get sick and forced them to leave work. The employer required them to use their sick time. The grievance asserted that the Safety and Health article was violated and that the employees should have their sick time returned since the painting caused their illnesses.

The Chief Probation Officer denied the grievance. He asserted that the possibility of having the offices painted during evening hours and weekends was considered, but "we were advised that this could not be done." He further stated that the time taken would not "be counted as an occurrence on the employees' evaluation."

Council No. 10 invoked the next step of the grievance procedure and a hearing was held. The Hearing Officer, an employer designee, found that the painting had caused an unsafe and unhealthful condition and therefore the contract had been violated. He stated in part:

Though the painting during work time was done by the landlord and apparently could not have been scheduled for an evening or weekend, it is unreasonable for the County to take the position that the conditions caused by inhaling paint fumes over an extended period of time could not cause certain employees, particularly one employee who was pregnant, to feel ill and unsafe and be unable to continue to work.

The Hearing Officer recommended that the sick time be returned to employees who had to use it and that two employees who had no sick time not be docked their pay.

The County's Director of Human Resources appealed the Hearing Officer's decision to the next step of the grievance procedure, the County Administrator. The Director asserted that the union had not met its burden of proving that the working condition was unsafe. The County Administrator found that the painting of offices during the work day did not create a per se unhealthful working condition and that only employees who submitted a doctor's note or other medical evidence linking their sickness with the painting should have their sick time returned.

Council No. 10 demanded binding arbitration. This petition ensued.

The County asserts that the dispute is not contractually arbitrable since it involves probation department officers who are Judiciary employees, not County employees, and the grievance procedure for Judiciary employees ends in an appeal to the Assignment Judge. It also asserts that by law matters involving Judiciary employees are not subject to binding arbitration.

Council No. 10 responds that the dispute involves only clerical employees and that these clerical employees were not Judiciary employees when the offices were painted. It also asserts that the County has waived its assertion that the aggrieved employees are Judiciary employees since it did not raise this contention before it filed this petition and since it appealed the Hearing Officer's decision to the County Administrator, not the Assignment Judge.

In its reply brief, the County asserts that all the grievants are Judiciary employees and hold titles such as investigator, probation officer, senior probation officer, clerk typist and data entry machine operator. It also asserts that it did not waive its scope claim since it filed this petition before an arbitration award was entered.

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.

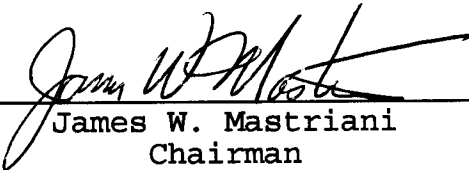
Thus, we cannot consider the grievance's merits or any contractual defenses the employer may have. We specifically decline to consider the County's contractual arbitrability defense.

The parties dispute whether the affected employees are County or Judiciary employees. We need not resolve that dispute since either way we would decline to restrain binding arbitration. Assuming that the employees are County employees, we would find this dispute to predominately involve a safety and health grievance and to be well within the scope of negotiations. The County has not argued to the contrary or asserted any governmental policy interests that would preclude arbitration. See, e.g., Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322, 332 (1989); State of New Jersey, P.E.R.C. No. 92-55, 18 NJPER 35 (¶23011 1991); State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985). Assuming that the employees are Judiciary employees, we would be without power to issue a decision binding either the employer or the employees. In re Matter of Passaic Cty. Judges, 100 N.J. 352 (1985); Passaic Cty. Probation Officers Ass'n v. Passaic Cty., 73 N.J. 247 (1977). Therefore, any order restraining arbitration would have to be obtained from the courts.

ORDER

The request of Camden County for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan was not present.

DATED: February 16, 1994  
Trenton, New Jersey  
ISSUED: February 17, 1994