

P.E.R.C. NO. 99-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MILLTOWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-50

MILLTOWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Milltown Board of Education for a restraint of binding arbitration of a grievance filed by the Milltown Education Association. The grievance contests the discontinuance of an employee's health care benefits. The Board asserts that the grievance was untimely and seeks to have the Commission direct the arbitrator to consider only issues of procedural arbitrability. The Commission concludes that no basis appears for imposing any limits on the issues the arbitrator may consider.

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, Borrus, Goldin, Foley, Vignuolo,
Hyman, Stahl & Clarkin, P.C., attorneys
(Anthony B. Vignuolo, on the brief)

For the Respondent (Rich Petersen, UniServ
Representative, on the brief)

DECISION

On January 13, 1999, the Milltown Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration concerning a grievance filed by the Milltown Education Association. The grievance contests the discontinuance of an employee's health care benefits.

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

The Association represents a negotiations unit including teachers. The parties have entered into a collective negotiations agreement effective from July 1, 1997 through June 30, 2000.

Joseph Rademacher is a music teacher employed by the Board. He works fewer than 30 hours per week.

On June 17, 1998, the superintendent, on behalf of the Board's negotiations committee, informed Rademacher that he would be ineligible for continued health benefits coverage during the 1998-1999 school year because he would work fewer than 30 hours per week. The committee relied upon an unspecified Board policy.

On August 3, 1998, Rademacher and the Association filed a grievance. The grievance asserted that employees working 20 hours or more per week were entitled to health benefits. The grievance was filed with the Board's president.

On August 13, 1998, the superintendent denied the grievance, asserting that it was untimely and that it should have been filed with Rademacher's supervisor.

On September 11, 1998, the Association demanded arbitration. It identified the grievance to be arbitrated as a dispute over the Board's violation of a long-standing past practice of providing medical benefits to employees who worked 20 or more hours per week. The demand further asserted that the grievance was filed at the Board level since an administrator would not be in a position to overturn the Board's discontinuance of Rademacher's benefits.

An arbitrator was appointed. Rejecting the Board's objections concerning his authority, the arbitrator determined that he would hear both the procedural and substantive issues raised in the grievance. This petition ensued.

The petition appears to seek an order directing the arbitrator to consider only the procedural arbitrability issues and, should he rule for the Association, to remand the matter to the Board for a hearing on the health benefits issue.

On January 14, 1999, the Commission Case Administrator advised the Board that the Commission will not restrain arbitration over procedural issues. See Middle Tp., P.E.R.C. No. 86-42, 11 NJPER 633 (¶16221 1985). The Board was advised that it should withdraw the petition since it did not seek to restrain arbitration over the substantive issue.

The Board declined to withdraw the petition. It reiterated that the arbitrator should hear only the procedural arbitrability defenses. If he rejected them, he should remand the health benefits issue to the Board for a hearing in order to exhaust administrative remedies.

The Association asserts that procedural arbitrability issues fall within the arbitrator's authority and outside the Commission's jurisdiction under Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).


The Association is correct. Under Ridgefield Park, no basis appears for a restraint of arbitration or for imposing any limits on the issues the arbitrator may consider. The arbitrator may review the parties' negotiated grievance procedure and

determine whether the grievance was timely and properly filed.^{1/}

ORDER

The request of the Milltown Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: April 29, 1999
Trenton, New Jersey
ISSUED: April 30, 1999

^{1/} The negotiability of the underlying health benefits issues does not appear to be in dispute. See Frankford Tp. Bd. of Ed., P.E.R.C. No. 98-60, 23 NJPER 625 (¶28304 1997).