

P.E.R.C. NO. 94-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-94-20

BUTLER BLUE COLLAR WORKMAN'S
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association against the Borough of Butler. The grievance asks the Borough to discipline the line superintendent of the electric division for verbally abusing an employee. The Commission finds that a majority representative may not invoke binding arbitration to contest discipline imposed or not imposed on a non-unit employee.

P.E.R.C. NO. 94-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-94-20

BUTLER BLUE COLLAR WORKMAN'S
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, attorneys
(Beth A. Hinsdale, of counsel)

For the Respondent, A.J. Fusco, Jr., P.A., attorney

DECISION AND ORDER

On September 3, 1993, the Borough of Butler petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association. The grievance asks the Borough to discipline the line superintendent of the electric division for verbally abusing an employee.

The parties have filed a certification, exhibits, and briefs. These facts appear.

The Association represents the Borough's blue collar employees. The parties entered into a collective negotiations agreement effective from January 1, 1989 through December 31, 1991. The grievance procedure ends in binding arbitration.

Article VIII is entitled Management Responsibilities. Under it, "[t]he Employer agrees to accept definite responsibility towards the Employees, granting Employees the right to: (b) ...work in a pleasant, friendly atmosphere where they receive intelligent supervision and fair treatment."

Article IX is entitled Personnel Policy. Under it, the employer must: "(c) respect the rights of each and every Employee and treat them with courtesy, dignity and consideration"; (f) do all things in the spirit of...friendliness and cooperation so that the Borough of Butler will be a better organization to work for"; and (j) "[not engage in] discrimination, interference, or coercion... against the Employees represented by the Association because of membership or activity in the Association."

The Borough has an ordinance concerning discipline. That ordinance makes employees subject to disciplinary action, including written reprimands and suspensions, for misconduct.

Raymond Whritenour is the line superintendent of the electric division. On May 18, 1983, Whritenour accused Kenneth Krug, a unit employee, of violating the Borough's policy against transporting food in a department vehicle. Whritenour and Krug yelled at each other and Whritenour cursed Krug. Gary Webb, the Borough Administrator, investigated the incident and received a letter from Krug detailing his account of the incident. Webb concluded that Whritenour had acted inappropriately, issued him a verbal warning, and cautioned him that further outbursts would not

be tolerated. Krug was not disciplined for violating the Board's vehicle policy. On May 27, Webb sent Krug a memorandum explaining that Whritenour had been disciplined and assuring Krug that no further abuse would be directed towards him.

That same day the Association demanded binding arbitration. Its demand asserts that Whritenour violated Articles VIII and IX and caused Krug to leave work ill and seek medical attention. It requests that the Borough "take action against Mr. Whritenour in the way of disciplinary procedures." 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 contractual merits of this grievance or any contractual defenses the Borough may have.

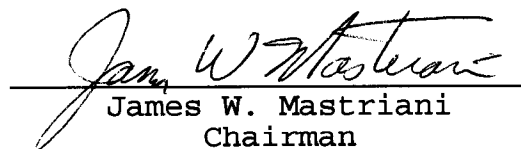
A majority representative may not invoke binding arbitration to contest discipline imposed or not imposed on a non-unit employee. Provisions setting terms and conditions of

employment for non-unit employees are not mandatorily negotiable. Dover Tp., P.E.R.C. No. 94-4, 19 NJPER 412 (¶24183 1993); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-132, 13 NJPER 352 (¶18143 1987), aff'd in part, App. Div. Dkt. No. A-4556-86T7 (3/11/88). Any allegation that the disciplinary action against Whritenour was too lenient because of anti-Association animus must be raised in an unfair practice charge. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983). We therefore restrain arbitration to the extent the grievance asserts that the line superintendent was not properly disciplined.

ORDER

The request of the Borough of Butler is granted to the extent the grievance asserts that the line superintendent was not properly disciplined.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: November 15, 1993
Trenton, New Jersey
ISSUED: November 16, 1993