

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN TOWNSHIP,

Petitioner,

-and-

Docket No. SN-99-38

LOCAL 11, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of North Bergen for a restraint of binding arbitration of grievances filed by Local 11, International Brotherhood of Teamsters. The grievances claim that the Township violated the parties' collective negotiations agreement when it reassigned a motor sweeper driver to hand sweeper duties; reassigned him from motor sweeper duty to the traffic department; assigned him to do manual labor; criticized him for signing an attendance sheet "under protest"; and warned him about improper maintenance of equipment. The Commission restrains arbitration to the extent the grievances assert that the reassignment to new duties or a department was motivated by hostility towards the filing of grievances or other union activity. The Commission also restrains arbitration of any claims contesting the Township's prerogative to make the reassignment. The request for a restraint of binding arbitration is denied concerning the other claims such as disciplinary warnings, procedures for ensuring information on attendance sheets is accurate, and seniority claims.

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.

P.E.R.C. NO. 99-82

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LOCAL 11, INTERNATIONAL
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Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, attorneys
(Joel G. Scharff, on the brief)

For the Respondent, Cohen, Weiss & Simon, attorneys
(Earl R. Pfeffer, on the brief)

DECISION

On December 11, 1998, the Township of North Bergen petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by Local 11, International Brotherhood of Teamsters. The grievances claim that the Township violated the parties' collective negotiations agreement when it reassigned a motor sweeper driver, Randy Mergel, to hand sweeper duties; reassigned him from motor sweeper duty to the traffic department; assigned him to do manual labor; criticized him for signing an attendance sheet "under protest"; and warned him about improper maintenance of equipment.

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

The Township is a Civil Service jurisdiction. Local 11 represents a unit of non-supervisory employees in the Township's Department of Public Works. Local 11 and the Township have entered into a collective negotiations agreement effective from January 1, 1996 through December 31, 1999. Article 5 is a comprehensive seniority provision; Article 13 contains a pledge that no employee will suffer discrimination on account of union activity. The contract's grievance procedure ends in binding arbitration.

On July 1, 1997, Mergel filed a grievance alleging that the Assistant Superintendent of Public Works, James Wiley, had reassigned him from his motor sweeper driver duties to hand sweeper duties on four dates. He alleged that other employees with less seniority and experience were assigned motor sweeper duties. As a remedy, Mergel asked to be put back on the motor sweeper.

On September 12, 1997, Mergel filed a grievance alleging that Wiley harassed him and others by threatening them and then reassigning Mergel from sweeper driver duties to the traffic department. Mergel's grievance also claims that Public Works Commissioner Frank Garguilo threatened that Mergel would be fired if he did not stop filing grievances.

On September 12, 1997, Mergel filed another grievance alleging that Wiley took him off his steady job for 10 years as a motor sweeper driver and put him in the traffic department.

On September 15, 1997, Mergel filed a grievance contesting a memorandum Wiley issued to Mergel. The memorandum criticized Mergel for refusing to sign an attendance sheet marking him down as "late" on September 10. The memorandum further noted that Mergel eventually signed the sheet, but not without adding that he did so "under protest." It stated that this addition was improper.

On September 23, 1997, Mergel filed a grievance protesting his removal from his sweeper driver position and his assignment to the traffic department.

On October 1 and 14, 1997, Mergel again grieved the transfer from the sweeper driver position to the traffic department, this time asserting that he was working out of title.

On October 22, 1997, Mergel filed a grievance protesting a written warning sent to Garguilo by Wiley concerning Mergel's alleged failure to empty and clean his sweeper after its use on Saturday, October 18. The warning stated that if it happened again Mergel would be suspended for three days.

All eight grievances were denied. They were then consolidated and submitted to arbitration. The arbitrator adjourned arbitration of the harassment claims pending the Township's filing of a petition for scope of negotiations determination.

The Township then filed a scope petition seeking a partial restraint of arbitration concerning the September 23, 1997 grievance. The Township did not seek to restrain arbitration of any

seniority claims, but asserted that claims that an employer has exercised a managerial prerogative in retaliation for an employee's exercise of rights protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., must be addressed through unfair practice proceedings.

We granted the Township's request for a partial restraint. North Bergen Tp., P.E.R.C. No. 99-31, 24 NJPER 470 (¶29217 1998). We held that under Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983), an assertion that discrimination tainted a transfer or reassignment must be made in a statutory forum, rather than through binding arbitration.

On November 4, 1998, Local 11 asked the arbitrator to set a date for arbitration of the remaining seven grievances. When it learned that Local 11 would continue to rely upon claims of anti-union animus in pressing its grievances, the Township filed this petition.

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 Board may have.


Our earlier holding controls this case to the extent the other grievances assert that Mergel's reassignment to new duties or a new department was motivated by hostility towards his grievances or other union activity. We will also restrain arbitration of any claims contesting the Township's prerogative to reassign Mergel. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). However, the grievances raise other claims which are legally arbitrable. For example, N.J.S.A. 34:13A-5.3 permits an agreement to arbitrate disciplinary warnings. Further, we believe that the parties may negotiate over procedures for ensuring that information on an attendance sheet is accurate and may agree that an employee may note his or her disagreement with any such information.^{1/} Accordingly, we will also order a partial restraint of arbitration.

^{1/} We also note, based on the Township's submissions in the earlier case, that it has not sought to restrain arbitration of any seniority claims concerning the allocation of overtime assignments among qualified employees.

ORDER

The request of North Bergen Township for a restraint of binding arbitration is granted to the extent the grievances filed by Local 11, International Brotherhood of Teamsters assert that the reassignment of Randy Mergel to new duties or a new department was motivated by hostility towards his filing grievances or other union activity or contest the Township's prerogative to reassign Mergel. The request for a restraint of binding arbitration is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: March 25, 1999
Trenton, New Jersey
ISSUED: March 26, 1999