

P.E.R.C. NO. 99-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN TOWNSHIP,

Petitioner,

-and-

Docket No. SN-98-106

LOCAL 11, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of North Bergen for a restraint of binding arbitration of a grievance filed by Local 11, International Brotherhood of Teamsters. The grievance claims that the Township violated the parties' collective negotiations agreement when it reassigned a motor broom driver to hand sweeper duties. The Township does not seek to block arbitration based upon any seniority claims, but seeks to restrain arbitration over Local 11's claim that the actions were in retaliation for rights protected under the New Jersey Employer-Employee Relations Act. The Township asserts this claim must be addressed through unfair practice proceedings. The Commission finds that an assertion that discrimination tainted a transfer must be made in a statutory forum, rather than through binding arbitration.

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

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

DECISION

On June 26, 1998, North Bergen Township petitioned for a scope of negotiations determination. The Township seeks a partial restraint of arbitration of a grievance filed by Local 11, International Brotherhood of Teamsters. The grievance claims that the Township violated the parties' collective negotiations agreement when it reassigned a motor broom driver, Randy Mergel, to hand sweeper duties.

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

Local 11 represents a unit of nonsupervisory employees in the Township's Department of Public Works. The Township is a Civil Service jurisdiction. 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.

Before September 10, 1997, Randy Mergel had been assigned to operate a motor broom. On that date he was reassigned, allegedly without explanation, to hand sweeper duties. Local 11 asserts that before the reassignment Mergel had filed numerous grievances complaining about overtime practices. The Township acknowledges that Mergel had filed a number of grievances and had also, on occasion, said he was a union shop steward.

On September 23, 1997, Local 11 filed a grievance asserting that the reassignment violated Article 13, Section 1 prohibiting discrimination based upon union activity. The grievance asserts:

As a direct result of a union matter concerning overtime on September 9, 1997, Asst. Supt. Jim Wiley under direct order on Sept. 10, 1997 took me off my steady job for the past 10 years as a Certified Sweeper Driver and put me in the Traffic Dept. which I have been working there under protest since.

In the section labeled "Adjustment Desired" Mergel states:

Asst. Supt. Jim Wiley gave me no explanation as to why I was moved off the sweeper to me or Shop Stewards Tom Miller. Unless this is harassment I want to be put back on the sweeper as per Civil Service rule and Union contract.

On September 25, 1997, the grievance was denied at the first step of the procedure. On December 2, Local 11 notified the employer that it was pursuing Mergel's harassment grievance to arbitration. On January 9, 1998, an arbitrator was appointed.

On June 8, 1998, the parties appeared before the arbitrator who had been appointed to hear this and other grievances raising overtime issues. The arbitrator granted the Township's request for a postponement so that it could seek a restraint of arbitration of the claim that Mergel had been harassed based upon his union activity. 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 Board may have.

The Township seeks only a partial restraint of arbitration. It does not seek to block arbitration based upon any seniority claims. It asserts that claims that an employer has exercised a managerial prerogative in retaliation for an employee's exercise of rights protected by the Employer-Employee Relations Act must be addressed through unfair practice proceedings. It cites Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983) and several other decisions applying Teaneck's holding that allegations

that a managerial prerogative was exercised discriminatorily must be litigated through unfair practice proceedings, not binding arbitration. See, e.g., Ocean Tp. Bd. of Ed., P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985), aff'd NJPER Supp.2d 164 (¶144 App. Div. 1986), certif. den. 105 N.J. 547 (1986); Elizabeth Bd. of Ed., P.E.R.C. No. 84-154, 10 NJPER 441 (¶15197 1984). It asserts that these cases apply irrespective of whether or not Mergel was acting as a union steward. Local 11 argues, citing West Windsor Tp. v. PERC, 78 N.J. 98, 107-108 (1978), that an arbitrator may hear the harassment claims even if to do so might implicate unfair practice issues.

Under Teaneck, an assertion that discrimination tainted a transfer must be made in a statutory forum, rather than through binding arbitration.^{1/} See, e.g., Rutgers, the State Univ., P.E.R.C. No. 96-42, 22 NJPER 27 (¶27013 1995) (unfair practice proceeding proper forum to resolve claim that promotion application was denied in reprisal for winning grievance).^{2/} We therefore restrain arbitration.

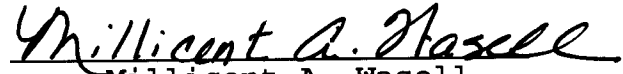
^{1/} Teaneck's actual holding -- that the denial of a reappointment to an extracurricular position cannot be contested through binding arbitration -- has been legislatively superseded. N.J.S.A. 34:13A-23.

^{2/} West Windsor does not authorize binding arbitration of discrimination claims, although it does allow for presentation of such grievances at earlier stages of a grievance procedure.

ORDER

The request of North Bergen Township for a partial restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: September 24, 1998
Trenton, New Jersey
ISSUED: September 25, 1998