

P.E.R.C. NO. 2002-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKEHURST BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-47

LAKEHURST EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Lakehurst Board of Education for a restraint of binding arbitration of a grievance filed by the Lakehurst Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by denying the Association its contractual right to present its views at all steps of the grievance procedure. The Commission holds that N.J.S.A. 34:13A-5.3 requires negotiations over grievance procedures. The employer's contractual defenses concerning the applicability and conditions of the parties' grievance procedure must be addressed by the arbitrator.

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, Sinn, Fitzsimmons, Cantoli, West & Pardes, P.C., attorneys (Kenneth B. Fitzsimmons, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys (Richard A. Friedman, on the brief)

DECISION

On March 28, 2002, the Lakehurst Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Lakehurst Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by denying the Association its contractual right to present its views at all steps of the grievance procedure.

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

The Association represents full and part-time teachers, assistants and nurses. The Board and the Association are parties' to a collective negotiations agreement effective from July 1, 1999

through June 30, 2002. The grievance procedure contains three levels and ends in binding arbitration. Section C (d) provides:

The failure at any step of this procedure to communicate the decision on a grievance within the specified time limit shall permit the aggrieved employee to proceed to the next step. The failure at any step of this procedure to appeal a grievance to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

Level One provides for discussion with the chief school administrator, either directly or through the Association's representative. Level Two provides for filing a written grievance with the Board and the Association. Level Three provides for binding arbitration.

On December 21, 2000, the Association filed a grievance. The grievance asserted that the Association is being denied its contractual right to present its views at all stages of the grievance procedure.

On January 2, 2002, the superintendent wrote to the Association president about the grievance. He declined to take action on the grievance, stating that it did not rise to the level of a grievance under the contract. He noted that the Board had not held Level Two hearings for the last four grievances, asserting that they may have lacked merit. He suggested that the Board might be willing to hear them if the issues had more substance.

On February 6, 2002, the Association demanded arbitration. It again claims a right to present its views at each level of the grievance procedure. 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.

We do not consider the merits of the Association's contractual claims or the employer's contractual defenses.

The Board argues that the refusal to schedule a hearing is not an unfair practice where the Association can unilaterally proceed to the next step of the grievance procedure. It asserts that under the parties' grievance procedure, the Association has the right to proceed to arbitration if the Board does not respond within 25 days.

The Association responds that the content of the parties' grievance procedure is mandatorily negotiable and that an employer's failure to adhere to the negotiated procedure is legally arbitrable.

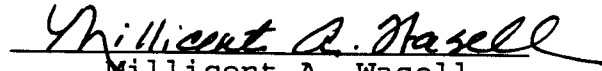
N.J.S.A. 34:13A-5.3 requires negotiations over grievance procedures. See also West Windsor Tp. v. PERC, 78 N.J. 98, 106 (1978) (procedural details of the grievance mechanism are mandatorily negotiable). We have refused to restrain arbitration over a claim that an employer violated the parties' negotiated grievance procedures. See, e.g., Essex Cty. College, P.E.R.C. No. 98-115, 24 NJPER 175 (¶29087 1998). An employer's contractual defenses concerning the applicability and conditions of the parties' grievance procedure must be addressed by the arbitrator under Ridgefield Park. It is true that in an unfair practice case, a self-executing grievance procedure may be a valid defense to a charge that the employer refused to negotiate in good faith by failing to process a grievance at a particular step. See, e.g., New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶17164 1986). But we lack such jurisdiction in a scope of negotiations case, where a union is not seeking a finding of illegal conduct but instead seeks only to enforce an alleged contractual right to compliance with negotiated grievance procedures. That contractual claim is legally arbitrable. Any contractual defenses must be made to the arbitrator.

Accordingly, we decline to restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002  
Trenton, New Jersey  
ISSUED: May 31, 2002