

P.E.R.C. NO. 96-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-95-59

CAMDEN COUNCIL NO. 10,
NON-SUPERVISORY EMPLOYEES,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Camden Council No. 10, Non-Supervisory Employees against the City of Camden. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied an employee certain contractual benefits due employees injured on the job. The Commission concludes that N.J.S.A. 34:15-20 does not preclude an employee from pursuing a contractual claim to a paid leave of absence for an alleged work-related injury.

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, Murray, Murray & Corrigan, attorneys
(Karen A. Murray, of counsel; Linda Sabat, on the brief)

For the Respondent, Tomar, Simonoff, Adourian & O'Brien,
attorneys (Mary L. Crangle, of counsel)

DECISION AND ORDER

On December 30, 1994, the City of Camden petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Camden Council No. 10, Non-Supervisory Employees. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied an employee certain contractual benefits due employees injured on the job.

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

Council No. 10 represents City employees in non-supervisory job titles designated by the parties' collective negotiations

agreement. That agreement contains a grievance procedure ending in binding arbitration of contractual disputes. Article XIV of the current contract is entitled Fringe Benefits. Section A provides:

1. Any employee who suffers a temporary disability which is certified by the City Law Department as having arisen out of or in the course of employment shall be granted, for the period of such disability, a temporary leave of absence. Such leave of absence shall be with full pay for a maximum of three (3) months. Thereafter, the employee shall receive workers' compensation only.
2. The City Law Department shall have a period of ten (1) working days after the filing of an employee accident report to make a determination as to whether the employee disability arose out of his employment. If no determination is rendered within ten (10) working days as stated above, the absence of any determination shall be considered an approval on the part of the City of Camden that said disability arose out of the employee's employment. Any such preliminary determination is subject to reversal by a contrary decision by the Division of Worker's Compensation. This provision in no way limits the employee's legal right to challenge such determination by any legal means available.
3. Salary or wages paid or payable pursuant to this section shall be reduced by the amount of any worker's compensation award granted the employee for the disability. Paid leaves of absence granted pursuant to this section shall not be charged against previously accrued sick leave or vacation time.^{1/}

Sharon Combs-Pettigrew is a clerk typist in the Mayor's office. On or about March 29, 1993, she filed a workers' compensation claim against her employer. The petition alleged that

^{1/} The parties' prior contract, in effect when the grievance was filed, contained identical provisions with one exception: subsection (1) permitted a one year leave of absence from the date of injury.

on February 8, 1993 she fell while walking through the hall at her workplace and hurt her legs, shoulder and spine.

The City's Answer claimed that "[t]he alleged incident did not occur during the course of or arising out of the course of petitioner's employment." The Answer also denied that Combs-Pettigrew suffered any permanent disability resulting from a work-related injury.

Combs-Pettigrew and the City agreed to settle her workers' compensation claim. On March 17, 1994, a hearing was held before the Honorable Shelley B. Lashman, a workers' compensation judge, to ensure that the settlement was voluntary and that Combs-Pettigrew understood that her workers' compensation claim would be dismissed with prejudice and could never be reopened. Judge Lashman then entered in "Order Approving the Settlement with Dismissal." The order stated in part:

This is a lump sum settlement between the parties in the amount of \$2,000.00 (two thousand dollars) pursuant to N.J.S.A. 34:15-20 which has the effect of a dismissal with prejudice, being final as to all right and benefits of the petitioner and the petitioner's dependents and is a complete and absolute surrender and release of all their rights arising out of this/these claim(s). The payment hereunder shall be recognized as payment of workers' compensation benefits for insurance rating purposes only.

After this part of the form order, the Judge handwrote: "Issues - Causal Relationship and Liability."^{2/}

On April 12, 1994, Council No. 10 filed a grievance. The grievance asserted that the workers' compensation judge had determined that Combs-Pettigrew's accident qualified for workers' compensation coverage and she was therefore entitled to receive the fringe benefits specified by Section A of Article XIV. The grievance sought "[r]einstatement of time charged to employee during her absence due to work-related accident."

On May 10, 1994, the Acting Business Administrator denied this grievance. His letter stated, in part:

The City of Camden continues to maintain its position that this was non-work related incident, and, therefore, the status 'injured-on-duty' was never merited."

Council No. 10 then demanded arbitration and 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:

^{2/} According to a certification of Combs-Pettigrew's attorney in the workers' compensation proceeding, this settlement made no finding for or against compensability and did not waive any rights not part of the workers' compensation statutes. According to a certification of one of the City's attorneys in this case, the City believed that the settlement order disposed of all matters related to her alleged injury and the City would not have settled the case had it known that Combs-Pettigrew would pursue arbitration of her contractual claims.

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 cannot consider the contractual merits of this grievance or any contractual defenses the City may have.

This grievance concerns the mandatorily negotiable subject of paid leaves of absence for injured employees. Riverside Tp., P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994); Pennsauken Tp., P.E.R.C. No. 87-101, 13 NJPER 161 (¶18071 1987); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987); Jackson Tp., P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, 6 NJPER 338 (¶11169 App. Div. 1980); Morris Cty., P.E.R.C. No. 79-2, 4 NJPER 304 (¶4153 1978), aff'd NJPER Supp.2d 67 (¶49 App. Div. 1979). This grievance is thus legally arbitrable unless its submission to arbitration is preempted by specific workers' compensation statutes or regulations.

The City contends that N.J.S.A. 34:15-20 preempts arbitration. That statutes provides:

In case of a dispute over or failure to agree upon a claim for compensation between employer

and employee, or the dependents of the employee, either party may submit the claim, both as to the questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the Division of Workers' Compensation, as prescribed in Article 4 of this chapter (section 34:15-49 et seq.). After a petition for compensation or dependency claims has been filed, seeking compensation by reason of accident, injury or occupational disease of any employee, and when the petitioner is represented by an attorney of the State of New Jersey, and when it shall appear that the issue or issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner under this chapter, and the petitioner and the respondent are desirous of entering into a lump-sum settlement of the controversy, a judge of compensation may with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulation of the parties, and after such judge of compensation has determined that such settlement is fair and just under all the circumstances, enter "an order approving settlement." Such settlement, when so approved, notwithstanding any other provisions of this chapter, shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee's dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute. Any payments made under this section shall be recognized as payments of workers' compensation benefits for insurance rating purposes only.

According to the City, this statute precludes Combs-Pettigrew from receiving any other compensation or benefits for an alleged work-related injury once she accepted a lump sum settlement pursuant to that statute. The City further contends that if Combs-Pettigrew disliked the settlement order, her exclusive remedy was to appeal that order to the Appellate Division pursuant to N.J.S.A. 34:15-66.

Council No. 10 responds that while N.J.S.A. 34:15-20 waives Combs-Pettigrew's statutory claim to receive workers' compensation benefits, it does not bar her from asserting a contractual claim under the parties' collective negotiations agreement since such a contractual claim is beyond the scope of the workers' compensation statutes and outside the jurisdiction of a workers' compensation court. Council No. 10 further responds that the statutory right to appeal an order of a workers' compensation judge is irrelevant since the settlement order concerns only a statutory claim to receive workers' compensation benefits and not a contractual claim to receive a paid leave of absence.

A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively fixes a term or condition of employment, thereby eliminating the employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). N.J.S.A. 34:15-20 speaks only of an employee's surrendering "any right to compensation or other benefits arising out of such claim under the statute" and thus waives only an employee's right to pursue a statutory workers' compensation claim. This statute does not expressly, specifically, and comprehensively preclude an employee from pursuing a contractual claim to a paid leave of absence for an alleged work-related injury. Compare Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980) (right to pursue education law

claims before Commission of Education does not preclude right to pursue contractual claims before arbitrator). Similarly, an employee need not appeal a settlement order resolving a statutory claim to receive workers' compensation benefits in order to preserve a contractual claim to receive a leave of absence.

The City asserts that it would not have accepted the settlement order had it not believed that the order would dispose of all claims, statutory and contractual. But that belief does not make N.J.S.A. 34:15-20 preemptive of Combs-Pettigrew's contractual claims. Whether the City and Combs-Pettigrew in fact agreed that the settlement order would preclude any contractual claims is a separate question for an arbitrator to consider.

The City also asserts that it has never conceded that Combs-Pettigrew was injured on-the-job and that Combs-Pettigrew has surrendered her opportunity to have a workers' compensation judge adjudicate that issue. But the question of whether Combs-Pettigrew may receive a paid leave of absence under Article XIV absent such a formal concession or adjudication goes to the contractual merits and must be addressed by an arbitrator.

For these reasons, we will not restrain arbitration.

ORDER

The request of the City of Camden for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: October 31, 1995
Trenton, New Jersey
ISSUED: November 1, 1995