

P.E.R.C. NO. 97-135

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER TOWNSHIP MUNICIPAL  
UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-97-82

TEAMSTERS UNION LOCAL 500,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Gloucester Township Municipal Utilities Authority for a restraint of binding arbitration of a grievance filed by Teamsters Union Local 500. The grievance asserts that the Authority violated the parties' collective negotiations agreement when it discharged a recycling operator. The Commission finds that civil service laws preempt binding arbitration of this discharge.

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, Maressa, Goldstein, Birsner,  
Patterson, Drinkwater & Oddo, attorneys  
(David C. Patterson, of counsel)

For the Respondent, Atkins & Cohen, attorneys  
(Robert C. Cohen, of counsel)

DECISION AND ORDER

On February 24, 1997, the Gloucester Township Municipal Utilities Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of arbitration of a grievance filed by Teamsters Union Local 500. The grievance asserts that the Authority violated the parties' collective negotiations agreement when it discharged a recycling operator.

The parties have filed exhibits and briefs. These facts appear.<sup>1/</sup>

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<sup>1/</sup> We deny the Authority's request for oral argument.

Local 500 represents all full-time and regular part-time employees in certain titles. The parties entered into a collective negotiations agreement effective from March 1, 1995 through February 28, 1998. Article XXXIII, entitled Discharge or Suspension, provides:

The Authority shall have the right to dismiss or suspend an employee for just cause. This shall not prohibit the Union on behalf of said employee from investigating any such dismissal or suspension and resorting to the grievance procedure provided in this Agreement.

Article X, entitled Grievances, provides:

In the event that suspension, demotion or discharge is sustained, the aggrieved shall be governed by the applicable Civil Service rules and regulations. A Civil Service disciplinary proceeding shall not be subject to the grievance procedure.

Step Three, the final procedure delineated in the grievance process, states:

If the grievance is not settled in Step Two, it may be submitted to an arbitrator from the New Jersey State Board of Mediation or P.E.R.C., mutually agreeable to both parties.

A grievance may be filed by the Union at its own instigation or at the request of any employee covered under this Agreement, instead of any individual employee.

On August 30, 1993, Stephen Waer was hired in the civil service classification of laborer. However, in March 1994, Waer was given a provisional appointment in another civil service title as a recycling operator and on July 6, 1995 he received a permanent appointment in that title.

After a wrist injury which resulted in a series of medical procedures and several extended absences, Waer was advised by the Authority on July 5, 1996 that he was being reclassified as a laborer. As a result of the change in classification, the Authority presented Waer with a civil service profile form for voluntary reclassification which Waer refused to sign.

On August 5, 1996, Waer was charged with insubordination and suspended for three days. He filed a grievance which was processed through Step Two of the grievance procedure. It is unclear whether Local 500 requested arbitration pursuant to Step Three. However, a second grievance was filed relating to the payment due to Waer as a result of the three-day suspension. This grievance was also processed through Step Two.<sup>2/</sup>

On October 24, 1996, the Authority served Waer with a Preliminary Notice of Disciplinary Action seeking his termination as a result of his continuing refusal to execute the form voluntarily reclassifying his position to laborer. Prior to the disciplinary hearing, Local 500 filed a grievance relating to the disciplinary action. The grievance was denied. On November 7, a hearing was conducted. On November 14, Waer was notified that his employment

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<sup>2/</sup> Local 500's brief suggested that it seeks to arbitrate the suspension and payment issues. The Authority responded that those issues are not properly before an arbitrator, but it has not asked for a restraint of arbitration on negotiability grounds.

was terminated. Waer did not appeal his termination to the Merit System Board.

On January 3, 1997, Local 500 demanded arbitration concerning Waer's discharge. 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.

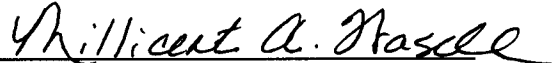
Thus, we cannot consider the contractual arbitrability or merits of the grievance.

Title 11A of the Civil Service Act governs disciplinary appeals of discharges of employees who hold permanent appointments in classified titles under the Act. Under N.J.S.A. 34:13A-5.3, civil service laws preempt binding arbitration over Waer's discharge. See, e.g., New Jersey Turnpike Auth. and New Jersey Supervisors Ass'n, 143 N.J. 185 (1996). Any request for relaxation of timeliness rules under civil service laws must be made to the Merit System Board.

ORDER

The request of the Gloucester Township Municipal Utilities Authority for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

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

DATED: May 29, 1997  
Trenton, New Jersey  
ISSUED: May 30, 1997