P.E.R.C. NO. 2011-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOUNT HOLLY,

Petitioner,

-and- Docket No. SN-2010-079

CWA LOCAL 1036,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Mount Holly for a restraint of binding arbitration of a grievance filed by CWA Local 1036. The grievance challenges a five-day suspension plus a fine. The Commission holds that because the discipline constitutes major discipline in a Civil Service jurisdiction, any appeal must be made to the Civil Service Commission.

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. 2011-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOUNT HOLLY,

Petitioner,

-and- Docket No. SN-2010-079

CWA LOCAL 1036,

Respondent.

Appearances:

For the Petitioner, Gruccio, Pepper, De Santo & Ruth, P.A., attorneys (Shant H. Zakarian, of counsel)

For the Respondent, Barry D. Isanuk, attorney

DECISION

On March 25, 2010, the Township of Mount Holly petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by CWA Local 1036. The grievance challenges a five-day suspension and fine. Because the discipline constitutes major discipline in a Civil Service jurisdiction, we restrain binding arbitration.

The parties have filed briefs and exhibits. The Township submitted a certification from the Township Manager. These facts appear.

CWA Local 1036 represents blue collar employees of the Township. On December 31, 2009, the Township suspended an employee for five days after he was involved in a vehicle

accident. The employee filed a grievance. The Township Manager, acting as hearing officer, sustained the charges and fined the employee an amount equal to five days' pay and a fine of $126.04. The Manager certifies that the fine was restitution. On February 18, 2010, the Township issued a Final Notice of Disciplinary Action suspending the employees for five days beginning February 23 and fining him $126.04, an amount equal to six hours pay. Local 1036 then demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.
>
> [Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
>
> [Id. at 404-405]

To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

Local government Civil Service employees must appeal major discipline to the Civil Service Commission. Major discipline is defined as removal, disciplinary demotion, or suspension or fine of more than five working days at any one time. CWA v. Monmouth Cty., 300 N.J. Super. 272 (App. Div. 1998); North Bergen Municipal Utilities Auth., P.E.R.C. No. 2001-34, 27 NJPER 39 (¶32020 2000).

The Township argues that the employees sole avenue to appeal his major discipline is to the Civil Service Commission.

Local 1036 responds that the Township did not follow Civil Service regulations in imposing the discipline and that the scope petition should be dismissed. N.J.A.C. 4A:2-2.4(c) provides that an appointing authority may only impose a fine as follows:

> 1. As a form of restitution;
>
> 2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or
>
> 3. Where an employee has agreed to a fine as a disciplinary option.

Local 1036 asserts that the employee did not agree to a fine, the fine was not in lieu of a suspension, and there was no reference to restitution in the hearing officer's report.

The combined fine and suspension meets the definition of major discipline and any appeal must be to the Civil Service Commission. Whether the fine was properly imposed under Civil Service regulations can be answered by that Commission.

ORDER

The request of the Township of Mount Holly for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: October 28, 2010

Trenton, New Jersey