

P.E.R.C. NO. 83-148

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOMS RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-43

TOMS RIVER SCHOOLS BUS DRIVERS'  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance the Toms River Schools Bus Drivers' Association filed against the Toms River Board of Education. The grievance alleged that the Board terminated a bus driver without just cause. The Commission, applying a companion case, In re Willingboro Board of Education, P.E.R.C. No. 83-147, 9 NJPER \_\_\_\_ (¶ \_\_\_\_ 1983), held the dispute was arbitrable under the recent amendment to N.J.S.A. 34:13A-5.3, which makes arbitrable some, but not all disciplinary determinations and Plumbers and Steamfitters v. Woodbridge Board of Education, 159 N.J. Super. 83 (App. Div. 1978) since this school bus driver had no tenure rights or alternate statutory appeal procedure to challenge her termination.

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Appearances:

For the Petitioner, Stanley, C. Gerrard,  
Consultant, Metzler Associates

For the Respondent, Starkey, Kelly, Cunningham,  
Blaney & White, Esqs. (James M. Blaney, of Counsel)

DECISION AND ORDER

On January 8, 1982, the Toms River Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a permanent restraint of binding arbitration of a grievance filed by the Toms River Schools Bus Drivers' Association ("Association"). The grievance alleges that a bus driver was terminated without just cause.

Both parties have filed briefs and accompanying documents. The following facts appear.

The Association is the majority representative of the Board's regular school bus drivers. The Board and the Association have entered a collective negotiations agreement effective between July 1, 1980 and June 30, 1983. Section B provides: "no bus

driver shall be disciplined or reprimanded without just cause. Any such actions asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure." This procedure culminates in binding arbitration.

On September 16, 1981, the Board terminated Nancy Murphy from the position of school bus driver she had held for ten years. In a letter notifying Murphy of her termination, the assistant superintendent listed the reasons as: "1. Negative attitude. 2. Failing to report unsafe conditions. 3. Failing to work cooperatively with your supervisor. [and] 4. Excessive absence."

The Association then filed a grievance asserting that the Board terminated Murphy without just cause and thus violated the contract.<sup>1/</sup> When the parties failed to resolve this matter at the lower levels of the grievance procedure, the Association sought binding arbitration. The Board responded with the instant petition. The parties have agreed to stay arbitration pending this determination.

<sup>1/</sup> Simultaneously, Murphy filed a claim for unemployment compensation with the Division of Unemployment and Disability Insurance of the Department of Labor and Industry. After a hearing, an Appeals Examiner found that Murphy worked to the best of her ability and that the Board had not presented evidence of any misconduct. In addition, Murphy has notified the Board that she intends to commence a civil action asserting that she was terminated in retaliation for filing a worker's compensation claim. Lally v. Copygraphics, 85 N.J. 668 (1981).

Section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., has recently been amended to permit binding arbitration of some disciplinary determinations. That section, now provides, in pertinent part:

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

\* \* \*

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.  
(Emphasis supplied).

Under this section, binding arbitration as a procedure for reviewing disciplinary determinations is legal unless: (1) it replaces or is inconsistent with any alternate statutory appeal

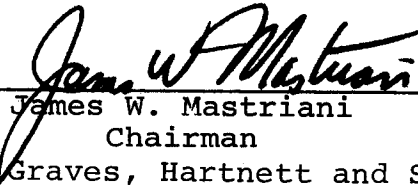
procedure, or (2) the disciplined employee has statutory protection under tenure or civil service law. The question in this case, then, is whether the disciplined school bus driver has statutory protection under tenure laws or an alternate statutory appeal procedure.

In a companion case decided today, In re Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9 NJPER \_\_\_\_ (¶ \_\_\_\_ 1983), we held that nontenured employees without any statutory procedures for appealing disciplinary determinations could have such determinations reviewed through binding arbitration under section 5.3 and Plumbers and Steamfitters v. Woodbridge Bd. of Ed., 159 N.J. Super. 83, 87-88 (App. Div. 1978).<sup>2/</sup> Willingboro governs here: school bus drivers have no statutory entitlement to tenure or statutory procedures for appealing disciplinary determinations. Accordingly, the instant dispute is arbitrable.

ORDER

The request of the Toms River Board of Education for a permanent restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett and Suskin voted in favor of this decision. Commissioner Butch voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

June 1, 1983

ISSUED: June 2, 1983

<sup>2/</sup> Willingboro also held that Plumbers and Steamfitters and the amendment to section 5.3 applied to scope petitions filed before the effective date, July 30, 1982, of the amendment. Willingboro thus overruled In re Egg Harbor Township School Dist., P.E.R.C. No. 83-39, 8 NJPER 578 (¶13267 1982).