

P.E.R.C. NO. 92-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-92-74

PBA LOCAL 167,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by PBA Local 167 against Mercer County. The grievance contests the suspension of a corrections officer for unexcused absences. The Commission finds that the seven day suspension is reviewable as of right by the Merit System Board. That review constitutes an alternate statutory appeal procedure.

P.E.R.C. NO. 92-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY,

Petitioner,

-and-

Docket No. SN-92-74

PBA LOCAL 167,

Respondent.

Appearances:

For the Petitioner, Harry G. Parkin, Mercer County Counsel (Alfred B. Vuocolo, Assistant County Counsel, of counsel and on the brief)

For the Respondent, Wills, O'Neill & Mellk, attorneys (G. Robert Wills, of counsel)

DECISION AND ORDER

On January 29, 1992, Mercer County petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by PBA Local 167. The grievance contests the suspension of a corrections officer for unexcused absences.

The County has filed a brief and exhibits. These facts appear.

The County is a civil service jurisdiction. The PBA is the majority representative of correction officers. The PBA and the County are parties to a collective negotiations agreement effective from January 1, 1990 through December 31, 1991. The grievance procedure ends in binding arbitration.

On September 23, 1991, Correction Officer Robert L. Johnson was served with a "Preliminary Notice of Disciplinary Action." The notice alleged that on August 11 and August 31, 1991, Johnson failed to appear for work and failed to follow proper procedures for reporting his absences. On October 23, 1992, after a departmental hearing, a hearing officer imposed the following penalty:

Mr. Johnson is suspended for a total of seven (7) days without pay in regard to the charges brought against him. He is likewise placed on a six (6) month probationary period beginning October 28, 1991. Of the seven (7) day suspension I will hold in abeyance a total of two (2) days which will be waived on completion of the probationary period. If, though, during the said probationary period any new disciplinary charges are brought against officer Johnson the two (2) days in abeyance will be enforced along with any new penalties.

On October 28, 1991, Johnson was served with a "Final Notice of Disciplinary Action" reflecting this penalty. The initial suspension was scheduled to take place from December 5 through December 9, 1991.

On November 4, 1991 the PBA sought the appointment of an arbitrator from our grievance arbitration panel (Docket No. AR-92-263). The demand for arbitration described the grievance as an appeal of "a seven day suspension as described in the attached Preliminary and Final Notices of Disciplinary Action." The County asserted that review of the discipline must be sought before the Merit System Board and filed this petition.

The County asserts that because the suspension is for a total of seven days, binding arbitration is barred under N.J.S.A. 34:13A-5.3 and the Civil Service Act, N.J.S.A. 11A:1-1 et seq. The PBA professes no preference as to whether the discipline is reviewed by an arbitrator or by the Merit System Board, but asserts that because the discipline was divided into a five day and two day penalty, an employee of the Department of Personnel had stated that an appeal to the Merit System Board was not available.^{1/}

N.J.S.A. 34:13A-5.3. provides:

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.

Binding arbitration is prohibited if an employee has an alternate statutory appeal procedure for contesting the particular type of discipline imposed. CWA v. P.E.R.C., 193 N.J. Super. 658 (App. Div. 1984). N.J.S.A. 11A:2-14 provides for a right of appeal to the Merit System Board for an employee who receives a

^{1/} Our record contains no notice of appeal by the PBA to the Department of Personnel nor any written statement from the Department declining jurisdiction.

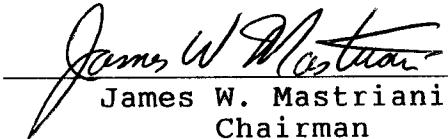
suspension of greater than five days. Where the suspension or fine is five days or less an employee can appeal to the Merit Systems Board if the aggregate number of days suspended or fined in any one calendar year is fifteen days or more, or where the employee receives a fine or suspension of five days or less more than three times in a calendar year, in which case the last of the three suspensions is reviewable. When a disciplinary penalty fits within these parameters, N.J.S.A. 11A:2-14 is an alternate statutory appeal procedure which bars binding arbitration.

We find that the penalty imposed is a seven day suspension which is reviewable as of right by the Merit System Board. The hearing officer did not attribute part of the suspension to the August 11 incident and the rest to the August 31 absence. The entire penalty was imposed for the two absences and the breach of reporting procedures.

ORDER

The County's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. Commissioner Bertolino voted against this decision. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992
Trenton, New Jersey
ISSUED: April 29, 1992