

P.E.R.C. NO. 83-154

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BAYONNE,

Petitioner,

-and-

Docket No. SN-83-95

COUNCIL 52, AFSCME,
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of three grievances that Council 52, AFSCME, AFL-CIO had filed against the City of Bayonne. The grievances involved three day suspensions given three Civil Service employees, allegedly for excessive absenteeism. The Commission, applying a companion case, In re County of Atlantic, P.E.R.C. No. 83-149, 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 Bergen County Law Enforcement Group, Superior Officers, PBA Local No. 134 v. Bergen County Board of Chosen Freeholders, App. Div. Docket No. A-2873-81-T2 (January 7, 1983) since Civil Service employees who are suspended for five days or less do not have a statutory right to have the Civil Service Commission review such suspensions.

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Appearances:

For the Petitioner, Apruzzese & McDermott, P.C.
(Frederick T. Danser, III, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

On March 28, 1983, the City of Bayonne ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition sought a permanent restraint of binding arbitration of three grievances that Council 52, AFSCME, AFL-CIO ("Council 52") sought to submit to binding arbitration. The grievances involved three day suspensions given three Civil Service employees, allegedly for excessive absenteeism.

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

Council 52 is the majority representative of the City's permanent municipal employees with a few exceptions immaterial to this case. The City and Council 52 have entered a collective

negotiations agreement effective from January 1, 1980 through December 31, 1982. Article XIV, entitled Discipline, provides that disciplinary actions such as suspensions "...may be instituted by the City for just and sufficient cause" and that a suspended employee may "...appeal an adverse decision to the Civil Service Department or submit his case to binding arbitration, but not both." The agreement also contains a grievance procedure which culminates in binding arbitration.

On November 5, 1982, the City's Director of Finance issued three day suspensions without pay to sewerage plant operators Ken Murtha, Matthew Pike, and Thomas Trainor for alleged excessive absenteeism. Council 52 grieved these suspensions as unjust; the City denied these grievances. Council 52 then demanded binding arbitration and the instant petition resulted.

The City contends that minor disciplinary determinations affecting Civil Service employees are not arbitrable under State v. Local 195, IFPTE, 179 N.J. Super. 146 (App. Div. 1981), certif. den. 89 N.J. 433 (1982); the recent amendment to N.J.S.A. 34:13A-5.3 making some, but not all disciplinary determinations arbitrable; and In re City of East Orange, P.E.R.C. No. 83-109, 9 NJPER 147 (¶14070 1983), appeal pending App. Div. Docket No. A-3688-82T3 ("East Orange"). Council 52 responds that minor disciplinary actions, specifically including suspensions of five days or less, are arbitrable under the recent amendment to

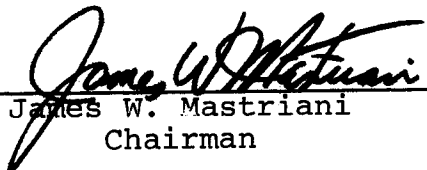
N.J.S.A. 34:13A-5.3 and Bergen County Law Enforcement Group, Superior Officers, PBA Local No. 134 v. Bergen County Bd. of Chosen Freeholders, App. Div. Docket No. A-2873-81T2 (1/7/83) ("Bergen County").

In a companion case decided today, In re County of Atlantic, P.E.R.C. No. 83-149, 9 NJPER ___ (¶ ___ 1983), we held that suspensions of County Civil Service employees for five days or less may be submitted to binding arbitration.^{1/} That decision applies here. Accordingly, we decline to restrain binding arbitration of Council 52's grievance.

ORDER

The request of the City of Bayonne for a permanent restraint of binding arbitration of the Murtha, Pike, and Trainor grievances is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
June 1, 1983
ISSUED: June 2, 1983

^{1/} Because East Orange was inconsistent with Bergen County, we overruled East Orange.