

P.E.R.C. NO. 82-112

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Petitioner,

-and-

Docket Nos. SN-82-17  
SN-82-18

P.B.A. LOCAL NO. 24,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Chairman of the Commission, acting under authority delegated by the full Commission, grants the City of Atlantic City's request for a permanent restraint of binding arbitration of two grievances P.B.A. Local No. 24 had filed against the City of Atlantic City. Each grievance had asserted that the City did not have just cause to suspend a police officer for one day.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Petitioner,

-and-

Docket Nos. SN-82-17  
SN-82-18

P.B.A. LOCAL NO. 24,

Respondent.

Appearances:

For the Petitioner, Matthew H. Powals, City Solicitor

For the Respondent, Howard J. Casper, Esq.

DECISION AND ORDER

On October 28, 1981, the City of Atlantic City (the "City") filed two Petitions for Scope of Negotiations Determinations with the Public Employment Relations Commission. Each petition seeks to restrain binding arbitration of a grievance which the Patrolmen's Benevolent Association, Local 24 ("Local 24") had filed against the City. Each grievance asserts that the City did not have just cause to suspend a police officer. The City's petitions contend that "...the subjecting of any aspect of disciplinary proceedings to either arbitration or negotiation is improper and unlawful."<sup>1/</sup>

The parties have filed briefs and documents evidencing the course of these disputes. The facts are neither complicated nor disputed.

<sup>1/</sup> Because of the congruence of issues, we have consolidated the two petitions.

The City and Local 24 have entered a collective agreement in which the City recognizes Local 24 as the representative of "...all uniformed police, detectives, and other special police units, excluding chief, deputy chief, inspectors and all other employees employed by the City." Article III, entitled Management Rights, states inter alia, that the City, through its Director of Public Safety, has the right to take disciplinary action, but that "[t]he practical impact of the decisions on the above matters [is] subject to the grievance procedure." Article V, entitled Grievance Procedures, states, in pertinent part: "The City shall not discipline any employee without just cause." The grievance procedure culminates in binding arbitration; the arbitrator is required to render his award "...within the meaning of this agreement and such rules and regulations as may be in effect by the Civil Service Commission by the State of New Jersey which might be pertinent...."

On May 18, 1981, the Department of Public Safety issued a Notice of Minor Disciplinary Action against police officer John Rothman. The notice charged Rothman with failing to search a police vehicle properly when securing it. Rothman was suspended for one day. On May 19, 1981, Rothman waived a hearing on this charge.

On August 14, 1981, the Department of Public Safety issued a Notice of Minor Disciplinary Action against police officer Ronald Sherry. The notice charged Sherry with violating

rules and regulations requiring the submission of proper reports and suspended him for one day.

On September 24, 1981, Local 24 filed Requests for Submission of a Panel of Arbitrators with the Commission in connection with both grievances. On October 20, 1981, the Commission appointed an arbitrator for each case. The instant scope petitions followed.

After thorough review of applicable law relating to the negotiability of issues involving discipline, I conclude that these grievances are non-arbitrable. In State of New Jersey v. Local 195, IFPTE, 179 N.J. Super. 146 (App. Div. 1981), certif. den., the Court clearly decided that no aspect of a public employer's disciplinary determinations could be the subject of either negotiation or binding arbitration:

In light of these fundamental principles, we are thoroughly convinced that the matter of the discipline of public employees is plainly a subject of essential inherent managerial prerogative which has been delegated by our Legislature to the public employer, and cannot be negotiated away by agreement with the employer. Ridgefield Park Ed. Assn. v. Ridgefield Bd. of Ed., supra, 78 N.J. at 160-161. The power to discipline a public employee for misconduct, incompetency, inefficiency, or other good cause is one of the most significant powers reposed in public employers, and is essential to the maintenance of an adequate, efficient and effective public work force. This power to discipline is also an integral and essential part of fundamental governmental policy. The public employers cannot effectively and efficiently perform their governmental functions and fulfill their obligations to the public if they do not have the power to discipline employees without the encumbrances of collective negotiations and binding arbitration. We cannot conceive that our Legislature, in enacting N.J.S.A. 34:13A-5.3 of the New Jersey Employer-Employee Relations Act, intended to burden the State's public employers in such a manner. In any event, we are firmly convinced that disciplinary determinations do not fall within the scope of mandatory negotiations as interpreted

by the courts of this State, and, therefore, cannot be appropriate subjects for collective negotiations and binding arbitration. In this respect, we repeat what our Supreme Court has stated so clearly in Bd. of Education of Bernards Tp. v. Bernards Tp. Ed. Assn, 79 N.J. 311, 325 (1979):

...there are but two categories of subjects in public employment negotiation: (1) mandatorily negotiable terms and conditions of employment, and (2) non-negotiable matters of government policy. 78 N.J. at 162. As to subjects falling within the former category, Township of West Windsor and State Supervisory Employees established that the parties may agree upon any dispute-resolution mechanism to resolve disagreements, including submission of such disputes to binding arbitration. As to subjects in the latter class, we ruled that the parties could not encroach upon managerial prerogatives by contracting for binding arbitration. Ridgefield Park, supra, 78 N.J. at 160; see, e.g., Dunellen Bd. of Educ., supra, 64 N.J. at 29.

Consequently, we hold that a New Jersey public employer, such as the State here, lacks the power and authority to negotiate binding arbitration procedures for disputes concerning disciplinary determinations.

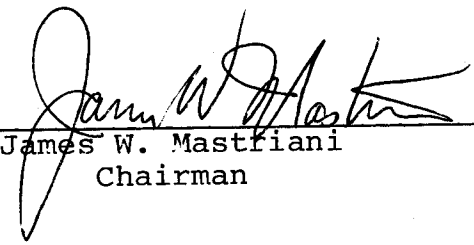
In City of Jersey City v. Jersey City Police Officers' Benevolent Ass'n, 179 N.J. Super. 137 (App. Div. 1981), certif. den. the Court employed similar reasoning in holding that all aspects of the process for disciplining police officers are non-negotiable and non-arbitrable. Given Jersey City, the existence of a permissive category of negotiations in police and firefighter cases does not make disciplinary determinations arbitrable.

Thus, it is clear that the instant grievances are non-arbitrable.<sup>2/</sup> Acting under authority delegated to the Chairman by the full Commission, I hereby restrain arbitration.

ORDER

The request of the City of Atlantic City for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
May 24, 1982

<sup>2/</sup> Legislation (Assembly Bill No. 706) authorizing mandatory negotiations and grievance arbitration of disciplinary issues was conditionally vetoed on May 3, 1982.