

P.E.R.C. NO. 83-151

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Petitioner,

-and-

Docket No. SN-82-124

COUNCIL NO. 6, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances that Council No. 6, New Jersey Civil Service Association had filed against the County of Morris. The grievances involved five day suspensions given two Civil Service employees and warning letters given three Civil Service employees. 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, Armand L. D'Agostino, Morris
County Counsel (John J. Harper, Assistant County
Counsel)

For the Respondent, Betty Lisovsky, President,
Council No. 6, NJCSA

DECISION AND ORDER

On June 30, 1982, the County of Morris ("County")
filed a Petition for Scope of Negotiations Determination with
the Public Employment Relations Commission. The County sought
to restrain binding arbitration of five grievances that Council
No. 6, New Jersey Civil Service Association ("Council No. 6")
has filed. The grievances involve five day suspensions given
two employees and warning letters given three employees.

The County has filed a brief and accompanying documents.
The following facts appear.

Council No. 6 is the majority representative of all
full-time or part-time classified, permanent, and provisional
employees of all County departments with the exception of certain

employees. The employees represented are Civil Service employees. The County and Council No. 6 have entered a collective negotiations agreement effective between January 1, 1981 and December 31, 1982. This agreement contains a grievance procedure which culminates in binding arbitration.

Council No. 6 has grieved the following disciplinary actions involving employees of the County's Shade Tree Commission: (1) and (2) five days suspensions without pay of Michael Cicchetti and James Poyer, assistant foremen, for alleged disregard of the County's coffee break schedule; (3) a warning letter issued Cicchetti for his alleged discourteous treatment of a County resident; (4) a warning letter issued Poyer for an allegedly derogatory motion he made at a Shade Tree Commission meeting; and (5) a warning letter issued Kevin DeMouth, a tree trimmer, for seconding Poyer's motion. Council No. 6 alleges that the County lacked just cause for these actions. When the parties were unable to resolve these grievances at the lower levels of the grievance procedure, Council No. 6 sought binding arbitration. The County responded with the instant petition.

The County asserts that these grievances are non-arbitrable under State v. Local 195, IFPTE, 179 N.J. Super. 146 (App. Div. 1981), certif. den. 89 N.J. 433 (1982) ("Local 195") and City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J.

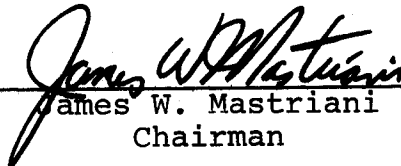
433 (1982) ("Jersey City").^{1/}

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 and other minor disciplinary determinations may be submitted to binding arbitration.^{2/} That decision applies here. Accordingly, we decline to restrain binding arbitration of Council No. 6's grievance.

ORDER

The request of the County of Morris for a permanent restraint of binding arbitration of the Cicchetti, Poyer, and DeMouth 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. Commisisoner Butch voted against the decision.

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

^{1/} The County also asserts, parenthetically, that the parties' grievance procedure exempts Civil Service matters and therefore these disciplinary actions are not contractually arbitrable. We, of course, do not consider questions of contractual arbitrability when addressing the abstract issue of whether a matter in dispute is within the scope of collective negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975).

^{2/} Because a previous Commission decision, 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, proved inconsistent with an opinion of the Appellate Division of the Superior Court, 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 (January 7, 1983), we overruled East Orange.