

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-94-72

DISTRICT 1199J, NUHHCE,
AFSCME, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by District 1199J, NUHHCE, AFSCME, AFL-CIO against the County of Hudson. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a clerk typist for three days without cause. CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984) and Bergen Cty. Law Enforcement Group v. Bergen Cty. Freeholder Bd., 191 N.J. Super. 319 (App. Div. 1993), permit an employer to agree to arbitral review of any disciplinary determination for which the disciplined employee does not have an alternate statutory appeal procedure. Conlon v. Middlesex Cty. Dept. of Corrections, ___ N.J. Super. ___ (Law Div. 1994), Law Div. Dkt. No. L-354-94 (7/29/94), held that the 1986 Civil Service Act authorizes binding arbitration as a negotiated procedure for appealing minor disciplinary determinations. The Commission holds that it is bound by the Appellate Division's holdings on the application of the discipline amendment to minor disciplinary determinations unless those holdings are overruled; and is also guided by the holding in Conlon. Accordingly, it concludes that this employer could have legally agreed to arbitrate this minor disciplinary dispute.

P.E.R.C. NO. 95-48

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Appearances:

For the Petitioner, Genova, Burns, Trimboli & Vernioia,
attorneys (Stephen E. Trimboli, of counsel)

For the Respondent, Balk, Oxfeld, Mandell and Cohen,
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On February 4, 1994, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by District 1199J, NUHHCE, AFSCME, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a clerk typist for three days without cause.

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

The County is a Civil Service jurisdiction. The Merit System Board, formerly the Civil Service Commission, reviews certain disciplinary disputes arising in Civil Service jurisdictions.

Suspensions and fines of five days or less may not be appealed as of right to the Merit System Board.

District 1199J represents the County's blue and white collar non-supervisors, including clerk typists. The grievance procedure in the parties' collective negotiations agreement ends in binding arbitration of contractual disputes for which there is no appeal mechanism prescribed by Civil Service law. Article XXX is entitled Discharge and Penalties. Section 1 states: "The County shall have the right to discharge, suspend or discipline any Employee for cause."

Theresa McClam is a clerk typist. The employer filed a Notice of Minor Disciplinary Action against McClam accusing her of failing to advise her supervisor properly of her absence and failing to produce a doctor's note. After a departmental hearing conducted by an employer designee, the employer suspended her for three days without pay.

On January 11, 1994, District 1199J filed a grievance asserting that the suspension violated Article XXX. The grievance was denied, District 1199J demanded arbitration, and this petition ensued. It is undisputed that McClam does not have a statutory right to appeal this suspension to the Merit System Board.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement,

whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the grievance's contractual arbitrability or merits.

The County asserts that minor disciplinary determinations against Civil Service employees are not legally reviewable in binding arbitration under the discipline amendment, N.J.S.A. 34:13A-5.3, as interpreted by our Supreme Court in State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), or the 1986 Civil Service Act, N.J.S.A. 11A:1-1 et seq. District 1199J responds that minor disciplinary determinations against Civil Service employees continue to be legally arbitrable under the discipline amendment, as interpreted by the Appellate Division in CWA v. PERC, 193 N.J. Super 658 (App. Div. 1984) and Bergen Cty. Law Enforcement Group v. Bergen Cty. Freeholder Bd., 191 N.J. Super 319 (App. Div. 1983); the sentence in State Troopers questioning those holdings is dictum; and in any event the 1986 Civil Service Act authorizes an agreement to permit arbitral review of disciplinary determinations not appealable to the Merit System Board.


In Monmouth Cty., P.E.R.C. No. 95-47, 21 NJPER ____ (1995), a companion case issued today, we discussed State Troopers, the discipline amendment and the Appellate Division decisions interpreting it, and the Civil Service Act and a case interpreting

it, Conlon v. Middlesex Cty. Dept. of Corrections, ___ N.J. Super. ___ (Law Div. 1994), Law Div. Dkt. No. L-354-94 (7/29/94). We incorporate Monmouth's discussion of these issues. As we did in that case, we hold that given the interpretation of the discipline amendment in CWA v. PERC and Bergen Cty., and the interpretation of the 1986 Civil Service Act in Conlon, this employer could have legally agreed to arbitrate this minor disciplinary dispute.

ORDER

The request of the County of Hudson for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan and Ricci voted in favor of this decision. Commissioners Boose and Klagholz voted against this decision. Commissioner Wenzler was not present.

DATED: January 24, 1995
Trenton, New Jersey
ISSUED: January 25, 1995