P.E.R.C. NO. 95-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and- Docket No. SN-94-75

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 469 against the Township of Woodbridge. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a senior maintenance worker for five days without just 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.

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Appearances:

For the Petitioner, Genova, Burns, Trimboli & Vernoia, attorneys (James J. McGovern, III, of counsel)

For the Respondent, Hott & Margolis, attorneys (Sheldon E. Margolis, of counsel)

DECISION AND ORDER

On February 17, 1994, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 469. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a senior maintenance worker for five days without just cause.

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

The Township is a Civil Service community. 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.

Local 469 represents employees in the Township's Division of Parks. The grievance procedure in the parties' current collective negotiations agreement ends in binding arbitration of suspensions of five days or less. The same section of the contract provides that "[n]o employee shall be disciplined except for just and proper cause." The next section also requires just cause for suspensions and specifies certain procedures and rights governing suspensions.

Armando Chechele is a senior maintenance worker in the Division of Parks. In August 1993, he received a Notice of Minor Disciplinary Action charging him with insubordination for allegedly disobeying his supervisor's orders; disorderly conduct for allegedly removing a vehicle from the assigned work area without permission; neglect of duty for allegedly leaving the assigned work site without permission, and willful violation of Township rules for allegedly disobeying his supervisor's legal orders. The notice informed him that he was being suspended without pay for five days beginning the next day.

Local 469 immediately filed a grievance. The Business Administrator conducted a grievance hearing. He concluded that Chechele had left the job site without his supervisor's approval and was thus suspended for just cause.

Local 469 demanded arbitration. The demand asserts that the suspension was not justified or warranted and it seeks to have the disciplinary notice removed from Chechele's personnel file and his lost wages restored. This petition ensued.

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 merits of the grievance or whether it is contractually arbitrable.

The Township 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. Local 469 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

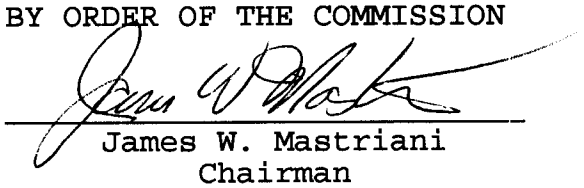
sentence in State Troopers questioning those holdings is dictum; and in any event the 1986 Civil Service Act authorizes an agreement for arbitral review of disciplinary determinations not appealable to the Merit System Board.

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 Township of Woodbridge 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