

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH SEWERAGE AUTHORITY,

Petitioner,

-and-

Docket No. SN-83-35

OIL, CHEMICAL AND ATOMIC  
WORKERS INTERNATIONAL UNION,  
AFL-CIO, LOCAL 8-958,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance the Oil, Chemical and Atomic Workers International Union, AFL-CIO, Local 8-958 had filed against the Long Branch Sewerage Authority. The grievance alleged that the Authority did not have just cause to dismiss a grade C operator. The Commission, applying a companion case, In re Willingboro Board of Education, P.E.R.C. No. 83-147, 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 Plumbers and Steamfitters v. Woodbridge Board of Education, 159 N.J. Super. 83 (App. Div. 1978) since this grade C operator had no tenure rights or alternate statutory appeal procedure to challenge his termination.

P.E.R.C. NO. 83-153

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Respondent.

Appearances:

For the Petitioner, Aron, Till & Salsberg, Esqs.  
(Rodney T. Hara, of Counsel)

For the Respondent, William F. Higgins,  
International Representative

DECISION AND ORDER

On November 4, 1982, the Long Branch Sewerage Authority ("Authority") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Authority seeks to restrain binding arbitration of a grievance the Oil, Chemical & Atomic Workers International Union, AFL-CIO Local 8-958 ("Local 8-958") has filed. The grievance alleges that the Authority violated its collective negotiations agreement with Local 8-958 when it dismissed a grade C operator without just cause.

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

Local 8-958 is the majority representative of the Authority's full-time blue collar employees. Local 8-958 and the

Authority have entered into a collective agreement effective through December 31, 1982. Article VIII specifically provides for binding arbitration of discharges.

On July 6, 1982, the Authority dismissed Thomas Olsen from his position of grade C operator, allegedly because of excessive absenteeism, disorderly conduct, inefficiency, and neglect of duty. On July 8, 1982, Local 8-958 filed a grievance asserting that the discharge was unfair. When the parties were unable to resolve this grievance at the lower levels of the grievance procedure, Local 8-958 demanded binding arbitration. The Authority responded with the instant petition.

The Authority contends that this matter is 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"); 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"); and In re Egg Harbor Township School Dist., P.E.R.C. No. 83-39, 8 NJPER 578 (¶13267 1982) ("Egg Harbor"). Local 8-958 contends that this dispute is arbitrable under the recent amendment to section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Section 5.3 now provides, in pertinent part:

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and

other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

\* \* \*

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.  
(Emphasis supplied).

Under this section, binding arbitration as a procedure for reviewing disciplinary determinations is legal unless: (1) it replaces or is inconsistent with any alternate statutory appeal procedure, or (2) the disciplined employee has statutory protection under tenure or civil service laws.

In the instant case, there is no claim that the discharged grade C operator had tenure or Civil Service protection or that he could avail himself of any alternate statutory appeal procedure for reviewing the Authority's disciplinary determination. Thus, under section 5.3, as amended, the dispute is arbitrable.

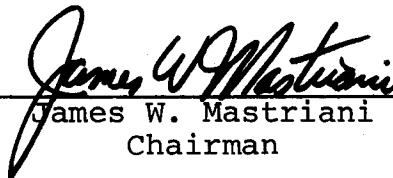
The Authority contends, however, that the amendment to section 5.3 is not retroactive under Egg Harbor and therefore the Commission must apply Local 195 and Jersey City and restrain arbitration. In a companion case, decided today, In re Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9 NJPER \_\_\_\_ (¶\_\_\_\_ 1983) ("Willingboro"), we held that nontenured employees without any statutory procedures for appealing disciplinary determinations could have such determinations reviewed through binding arbitration under section 5.3, as amended, and Plumbers and Steamfitters v. Woodbridge Bd. of Ed., 159 N.J. Super. 83, 88-89 (App. Div. 1978) ("Plumbers and Steamfitters"), a pre-amendment case. We specifically observed that the Appellate Division of the Superior Court had twice applied Plumbers and Steamfitters and the amendment to allow binding arbitration of disciplinary determinations made before the amendment. Lower Township Bd. of Ed. v. Lower Township Elementary Teachers Ass'n, P.E.R.C. No. 81-99, 7 NJPER 139 (¶12060 1981), aff'd App. Div. Docket No. A-3315-80T1 (12/8/82) ("Lower Township"); 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 light of Lower Township and Bergen County, we overruled Egg Harbor to the extent that it held that nontenured employees without statutory procedures for appealing disciplinary determinations could not submit grievances over pre-amendment disciplinary determinations to binding arbitration.

Willingboro governs this case. Accordingly, we deny the Authority's request for a permanent restraint of binding arbitration.

ORDER

The request of the Long Branch Sewerage Authority for a permanent restraint of binding arbitration 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