

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Petitioner,

-and-

Docket No. SN-83-87

UNION COUNCIL NO. 8, NJCSA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance that Union Council No. 8, NJCSA had filed against the City of Union. The grievance alleged that the County did not have just cause to suspend a heavy equipment operator, a Civil Service employee, for three days without pay. 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.

P.E.R.C. NO. 83-150

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Appearances:

For the Petitioner, Weinberg & Manoff, P.A.
(Richard J. Kaplow, of Counsel)

For the Respondent, Fox & Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION AND ORDER

On March 11, 1983, the County of Union ("County") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The County seeks to restrain binding arbitration of a grievance the Union Council No. 8, New Jersey Civil Service Association ("Council No. 8") filed. The grievance alleges that the County did not have just cause to suspend a heavy equipment operator for three days without pay.

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

Council No. 8 is the majority representative of certain classified Civil Service employees of the County. The County and Council No. 8 entered into a negotiations agreement effective from January 1, 1978 through October 31, 1980; the successor

agreement has not been reduced to writing because the parties still disagree over some provisions. For the purposes of this proceeding only, the County stipulates that Council No. 8 negotiated a binding arbitration provision in the 1981-82 agreement.^{1/}

On November 8, 1982, the County issued a Notice of Minor Disciplinary Action to Albert Irvin, a heavy equipment operator/bridge repairman in the Public Works Department. Pursuant to this notice, the County suspended Irvin for three days without pay. Irvin allegedly drove a payloader in an erratic fashion and almost injured another employee.

Irvin filed a grievance. He asserted that the three day suspension was unjust because mud on his shoe had caused his foot to slip, he stopped the vehicle in a safe distance and no accident resulted, and he had been operating equipment without incident for 18 years. When the grievance was not resolved at the lower levels of the grievance procedure, Council No. 8 sought binding arbitration. The County responded with the instant petition.

The County asserts the matter is non-arbitrable under In re City of East Orange, P.E.R.C. No. 83-109, 9 NJPER 147

^{1/} We, of course, will not consider whether a valid arbitration clause exists when we are addressing the abstract issue of whether a matter in dispute is within the scope of 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).

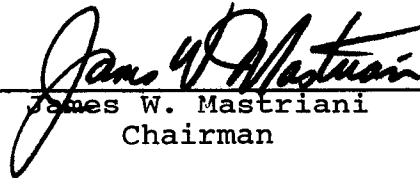
(¶14070 1983), appeal pending, App. Div. Docket No. A-3688-82T3 ("East Orange"). Council No. 8 contends that the matter is arbitrable under Bergen County Law Enforcement Group, Superior Officers, PBA Local No. 134 v. Bergen County Bd. of Chosen Freeholders, App. Div. Docket No. A-2873-81T2 (January 7, 1983) ("Bergen County").

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 may be submitted to binding arbitration.^{2/} That decision applies here. Accordingly, we decline to restrain binding arbitration of Council No. 8's grievance.

ORDER

The request of the County of Union for a permanent restraint of binding arbitration of the Irvin grievance 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

^{2/} Because East Orange was inconsistent with Bergen County, we overruled East Orange.