P.E.R.C. NO. 95-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and- Docket No. SN-95-16

LOCAL 3044, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Respondent

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Local 3044, American Federal of State, County and Municipal Employees, AFL-CIO against the Township of Woodbridge. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a senior clerk typist for three 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. The Commission also finds that a procedural issue -- the right to an opportunity to confer about a suspension -- is severable from review of the disciplinary determination and would thus be legally arbitrable even if review of the disciplinary determination were not.

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Appearances:

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

For the Respondent, Donald B. Dileo, Staff Representative

DECISION AND ORDER

On August 12, 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 an employee represented by Local 3044, American Federation of State, County and Municipal Employees, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a senior clerk typist for three days without just cause.

The parties have filed letter 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 3044 represents the employer's clerical employees. Article XVI of the parties' current contract is entitled Discipline. It provides that "[n]o employee shall be disciplined except for just and proper cause" and it subjects suspensions of five days or less to the negotiated grievance procedure. That procedure ends in binding arbitration.

Sharon Hedden is a senior clerk typist in the Department of Sanitation. In April 1994, she was reprimanded for failure to follow proper procedure. She was also suspended for three days for turning in incomplete and incorrect petty cash vouchers.

On May 2, 1994, Hedden filed a grievance. She asserted that she had been suspended for the same job for which she had been reprimanded. The suspension allegedly violated a contractual provision postponing suspensions for three days so that the employer, employee and union representative could confer in an attempt to resolve the matter.

On August 4, 1994, an employer representative denied the grievance. The response asserted that Hedden had been given three working days to contact the Director of Public Works about her suspension. It also asserted that Hedden had not been suspended for the same job for which she had been reprimanded.

Local 3044 demanded binding arbitration. 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 contractual merits of this grievance.

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 3044 responds that State Troopers is distinguishable because it involved State police, not Civil Service clerical employees.

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, CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984); Bergen Cty. Law Enforcement Group v. Bergen Cty. Freeholder Bd., 191

N.J. Super. 319 (App. Div. 1983), 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.

We also note that this grievance raises a procedural issue -- the right to an opportunity to confer about a suspension -- that is severable from review of the disciplinary determination and would thus be legally arbitrable even if review of the disciplinary determination were not. Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER ___ (¶_____ 1995). We accordingly decline to restrain binding arbitration of this grievance.

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