

P.E.R.C. NO. 95-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-94-76

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION,
PBA LOCAL NO. 51,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the New Jersey State Policemen's Benevolent Association, PBA Local No. 51 against the County of Hudson. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a police lieutenant for five days. The Commission holds that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993) has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes that right.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Genova, Burns, Trimboli & Vernioia,
attorneys (Joseph Licata, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder, Montalbano, attorneys (Bruce D. Leder, of
counsel)

DECISION AND ORDER

On February 22, 1994, the County of Hudson petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the New Jersey State Policemen's Benevolent Association, PBA Local No. 51. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended police lieutenant Ralph Cioffi for five days.

By letter dated March 16, 1994, the employer sought to amend its petition to restrain arbitration of a second grievance. That grievance alleges that the employer violated the parties' contract when it suspended Cioffi on a second occasion, this time for three days. The amendment was permitted.

The parties have filed exhibits and briefs. 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.

Local No. 51 represents the employer's police sergeants, lieutenants, captains and deputy chiefs. The parties entered into a collective negotiations agreement. Its grievance procedure ends in binding arbitration or an appeal to the New Jersey Department of Personnel, whichever is applicable. Article XIV provides: "Disciplinary action may be imposed upon an employee for just cause."

Ralph Cioffi is a police lieutenant. On September 7, 1993, the employer's personnel director, after conducting a hearing, sustained a disciplinary charge alleging that Cioffi had made a sarcastic and threatening remark to another police officer in retaliation for that officer having filed a report against Cioffi. Finding this incident part of a pattern of harassment, the director concluded that Cioffi should be suspended or fined for five days. The director dismissed several other charges against Cioffi as either untimely under N.J.S.A. 40A:14-106 or unfounded.

On November 10, 1993, the personnel director, after conducting a hearing, denied a grievance contesting a separate three-day suspension imposed against Cioffi. That suspension was imposed because Cioffi allegedly refused to comply with a superior's directive and was loud, abusive, and disrespectful.

Local No. 51 demanded arbitration over both suspensions. This petition and the amendment 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 arbitrability or merits of the grievance.

This case centers on two questions. First, does the discipline amendment to N.J.S.A. 34:13A-5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., permit public employers to enter into agreements calling for binding arbitration of minor disciplinary determinations involving their police officers? And second, if the answer to that question is

no, does the Civil Service Act of 1986 independently authorize such agreements in Civil Service communities?

The first question is whether the discipline amendment authorizes agreements to arbitrate minor disciplinary determinations against police officers. In four cases decided last month, we answered that question in the negative. Union Cty., P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), app. pending App. Div. Dkt. No. _____; Mt. Olive Tp., P.E.R.C. No. 95-44, 21 NJPER 65 (¶26047 1995); South Brunswick Tp., P.E.R.C. No. 95-45, 21 NJPER 67 (¶26048 1995), app. pending App. Div. Dkt. No. A-_____; Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (¶26049 1995). These cases applied the conclusion of State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rev'g 260 N.J. Super. 270 (App. Div. 1992), that the discipline amendment does not apply to any police officers -- municipal, county or state -- and thus does not provide a statutory basis for agreeing to arbitral review of disciplinary determinations involving police officers. The Court reasoned, in part, that the discipline amendment was not intended to displace prior case law establishing a prerogative to discipline police officers without arbitral review. See City of Jersey City v. Jersey City POBA, 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J. 433 (1982); Borough of Stone Harbor v. Wildwood PBA Local 59, 164 N.J. Super. 374 (App. Div. 1978), certif. den. 81 N.J. 270 (1979); see also West Windsor Tp. v. P.E.R.C., 78 N.J. 98, 120 (1978) (concurring opinion by Conford, J.).

The second question is whether the 1986 Civil Service Act independently authorizes agreements to arbitrate minor disciplinary determinations against police officers in Civil Service communities. N.J.S.A. 11A:2-16 of that Act specifically authorizes Civil Service employees to appeal minor disciplinary determinations "pursuant to an alternate appeal procedure where provided by a negotiated contract provision." Unlike police in non-Civil Service jurisdictions, police in Civil Service jurisdictions cannot appeal suspensions to the Superior Court pursuant to N.J.S.A. 40A:14-150.

In Conlon v. Middlesex Cty. Dept. of Corrections, 278 N.J. Super. 401 (Law Div. 1994), the Court held that N.J.S.A. 11A:2-16 authorized an agreement between the County and the Policemen's Benevolent Association calling for binding arbitration as an alternate procedure for appealing a minor disciplinary determination against a correction officer. The Court reasoned that this section codified then existing case law establishing that the discipline amendment permitted binding arbitration of such minor disciplinary determinations. See CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984);^{1/} Bergen Cty. Law Enforcement Group

^{1/} This case consolidated five appeals. City of E. Orange, P.E.R.C. No. 83-109, 9 NJPER 147 (¶14070 1983) (reversed); Morris Cty., P.E.R.C. No. 83, 151 NJPER 9 363 (¶14162 1983); Toms River Bd. of Ed., P.E.R.C. No. 83-148, 9 NJPER 360 (¶14159 1983); Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9 NJPER 356 (¶14158 1983); and Atlantic Cty., P.E.R.C. No. 83-149, 9 NJPER 361 (¶14160 1983). Certification was denied in Willingboro, 99 N.J. 169 (1984), and Atlantic Cty., 99 N.J. 190 (1984).

v. Bergen Cty. Freeholder Bd., 191 N.J. Super. 319 (App. Div. 1983). The Court also noted that its holding was not precluded by State Troopers since that case had not concerned or considered the 1986 Civil Service Act.

In seven cases decided last month, we declined to restrain binding arbitration of minor disciplinary determinations against Civil Service employees who were not police officers. Monmouth Cty., P.E.R.C. No. 95-47, 21 NJPER 70 (¶26050 1995), app. pending App. Div. Dkt. No. A-____; Hudson Cty., P.E.R.C. No. 95-48, 21 NJPER 73 (¶26051 1995), app. pending App. Div. Dkt. No. A-____; Woodbridge Tp., P.E.R.C. No. 95-49, 21 NJPER 74 (¶26052 1995), app. pending App. Div. Dkt. No. A-____; Woodbridge Tp., P.E.R.C. No. 95-50, 21 NJPER 75 (¶26053 1995), app. pending App. Div. Dkt. No. A-____; Woodbridge Tp., P.E.R.C. No. 95-51, 21 NJPER 76 (¶26054 1995), app. pending App. Div. Dkt. No. A-____; Woodbridge Tp., P.E.R.C. No. 95-52, 21 NJPER 77 (¶26055 1995), app. pending App. Div. Dkt. No. A-____; City of Orange Tp., P.E.R.C. No. 95-53, 21 NJPER 78 (¶26056 1995), app. pending App. Div. Dkt. No. A-____. We recognized that dictum in State Troopers had called the holdings in CWA v. PERC and Bergen Cty. "highly questionable," 134 N.J. at 412-413, but we held that these holdings construing the discipline amendment to permit binding arbitration bound us until they were overruled. We were also guided by Conlon, the only judicial opinion construing N.J.S.A. 11A:2-16.

N.J.S.A. 11A:2-16 covers all Civil Service employees and does not distinguish between police officers and other employees. The same was true of the discipline amendment, yet State Troopers carved police officers out of that law because the Court found that the legislative history specifically indicated an intent not to displace the case law removing the discipline of police officers from the ambit of negotiations and arbitration. Here, the legislative history of the Civil Service Act does not express any specific intent to exclude police officers. However, given the strong views of public policy expressed in State Troopers, we believe that the Supreme Court has clearly expressed the view that it will not allow public employers to agree to submit minor disciplinary determinations involving police officers to binding arbitration until the Legislature deliberately and expressly authorizes such agreements.

We recognize that Conlon involved a police officer under our Act and a police employee organization. We further recognize that Conlon reasoned that N.J.S.A. 11A:2-16 was intended to codify the holdings of Bergen Cty. and CWA v. P.E.R.C. and that Bergen Cty. involved a police officer under our Act and a police employee organization. Nevertheless, neither Conlon nor Bergen Cty. expressly considered whether police officers had lesser statutory rights than other employees under the general wording of either the discipline amendment or the Civil Service Act of 1986. We

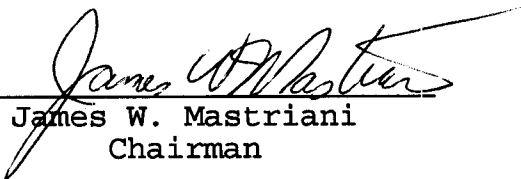
thus do not consider critical the fact that these cases involved police officers.

In sum, we believe that the Supreme Court has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes that right. There is no evidence that the Civil Service Act provides that specific authorization. We are thus compelled to restrain arbitration.

ORDER

The request of the County of Monmouth for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Commissioners Boose, Klagholz, Ricci and Wenzler voted in favor of this decision. Chairman Mastriani, Commissioners Buchanan and Finn voted against this decision.

DATED: March 24, 1995
Trenton, New Jersey

ISSUED: March 27, 1995