

P.E.R.C. NO. 83-149

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC,

Petitioner,

-and-

Docket No. SN-83-65

JERSEY NURSES ECONOMIC SECURITY
ORGANIZATION, NEW JERSEY STATE
NURSES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance the Jersey Nurses Economic Security Organization, New Jersey State Nurses Association had filed against the County of Atlantic. The grievance alleged that a nurse, a Civil Service employee, received a three day suspension without just cause. The Commission held that this grievance 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. In light of Bergen County, the Commission overruled In re City of East Orange, P.E.R.C. No. 83-109, 9 NJPER 147 (¶14070 1983).

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Appearances:

For the Petitioner, Martin R. Pachman, P.A.
(William Wallen, of Counsel)

For the Respondent, Zazzali, Zazzali & Krol, P.C.
(James R. Zazzali, of Counsel)

DECISION AND ORDER

On January 24, 1983, the County of Atlantic ("County") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The County sought to restrain binding arbitration of a grievance the Jersey Nurses Economic Security Organization, New Jersey State Nurses Association ("JNESO") has filed. The grievance alleged that a three day suspension without pay was given to a unit member without just cause.

JNESO is the majority representative of all full-time and regular part-time registered professional nurses employed by the County. These nurses are Civil Service employees.

The County and JNESO are parties to a collective agreement effective between January 1, 1981 and December 31, 1982.

Article XXII of this agreement provides, in part, that the County shall not suspend any permanent employee without just cause. The parties' grievance procedure culminates in arbitration.

On August 10, 1982, Elizabeth Kemenosh was notified that she had been suspended for three days without pay. A grievance was then filed asserting that the suspension was unjust. On October 13, 1982, a County personnel officer, after a hearing, denied the grievance. JNESO then demanded binding arbitration. The instant petition ensued.^{1/}

In its initial brief, the County contends that N.J.S.A. 34:13A-5.3, as recently amended, precludes binding arbitration of minor disciplinary determinations, including suspensions of five days or less, affecting Civil Service employees. The County contends that a Civil Service employee suspended for less than five days, although not entitled to an appeal as of right, may request an investigation of that suspension, N.J.A.C. 4:1-3.5(a)(3)(ii) and N.J.A.C. 4:1-3.8(a)(15), after receiving a written statement of the reasons for the suspension. N.J.A.C. 4:3-16.3. The County further contends that N.J.A.C. 4:1-16.7, which grants an appeal as of right to the Civil Service Commission only when a suspension exceeds five days, by negative implication necessarily preempts the field of available review procedures for shorter

^{1/} On February 4, 1983, Commission designee Edmund G. Gerber granted an interim restraint of binding arbitration until the Commission had an opportunity to interpret the recent amendment to N.J.S.A. 34:13A-5.3 concerning the negotiability and arbitrability of disciplinary determinations.

suspensions. Finally, the County contends that N.J.S.A. 34:13A-5.3, as recently amended, does not permit binding arbitration of minor disciplinary determinations.

In its statement of position, JNESO maintains that binding arbitration should not be restrained since there is no other meaningful right of review of a suspension of five days or less.

In a supplemental statement, the County asserts that the Commission's decision in In re City of East Orange, P.E.R.C. No. 83-109, 9 NJPER 147 (¶14070 1983) ("East Orange"), appeal pending App. Div. Docket No. A-3688-82T3, bars binding arbitration of the instant matter. JNESO has filed a supplemental statement asserting that 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) ("Bergen County") makes the instant dispute arbitrable.

N.J.S.A. 34:13A-5.3, as amended effective July 30, 1982, 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)

In East Orange, decided February 16, 1983, we held that N.J.S.A. 34:13A-5.3, as recently amended, did not permit Civil Service employees to submit minor disciplinary determinations, including suspensions of five days or less, to binding arbitration. We relied upon the legislative history of the amendment to N.J.S.A. 34:13A-5.3, particularly the Governor's two veto messages of Assembly Bill Nos. 706 and 1373 and the Legislature's apparent acceptance of the Governor's conditions for passage.

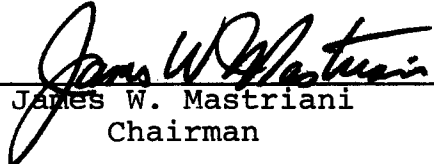
We agree with the County that if we applied East Orange, the instant dispute would not be arbitrable. JNESO, however, has correctly referred the Commission to the decision of the Appellate Division of the Superior Court in Bergen County construing the wording and legislative history of the amendment to N.J.S.A. 34:13A-5.3 to allow binding arbitration of minor

disciplinary determinations affecting Civil Service employees.^{2/}
The Court found that although these employees enjoyed certain protections under Civil Service laws and rules, they did not possess statutory protection with respect to a review of minor disciplinary determinations affecting them and that binding arbitration was a legal procedure for filling this gap. Accordingly, pursuant to Bergen County, we hold the instant dispute is arbitrable.^{3/}

ORDER

The request of the County of Atlantic for a permanent restraint of arbitration of Elizabeth Kemenosh's 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/} Although decided on January 7, 1983, Bergen County was not unofficially reported until after our East Orange decision and has not been officially reported to date. We also note that the Commission's primary jurisdiction over scope of negotiations disputes was not invoked in Bergen County.

^{3/} Because East Orange is inconsistent with Bergen County, we overrule East Orange.