P.E.R.C. NO. 85-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY PARK COMMISSION,

Petitioner,

-and-

Docket No. SN-85-3

TEAMSTERS LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance that Teamsters Local 97 filed against Passaic County Park Commission. The grievance alleges that the Park Commission discharged an employee without just cause. The Commission holds that this grievance may be submitted to binding arbitration under N.J.S.A. 34:13A-5.3 because the discharged employee has no alternate statutory appeal procedure for contesting his discharge.

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Appearances:
For the Petitioner, William F. Rabbat, Esquire

For the Respondent, Goldberger & Finn, Esquires
(Howard A. Goldberger, Of Counsel)

DECISION AND ORDER

On July 12, 1984, the Passaic County Park Commission ("Park Commission") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Park Commission seeks a restraint of binding arbitration of Teamsters Local 97's ("Local 97") contention that the Park Commission discharged an employee without just cause.

The Park Commission has filed a brief and exhibits. Local 97 has not filed a brief. The following facts appear.

Local 97 represents hourly employees of the Park Commission's maintenance departments. The Park Commission and Local 97 entered a collective negotiations agreement effective from January 1, 1983 through December 31, 1984. Article IV contains negotiated grievance procedures which end in binding arbitration. Section 1 of that article states that no permanent employee shall be removed, dismissed, or discharged without just cause.

Carmen Liguori was a tenured Park Commission employee within the negotiations unit which Local 97 represents. On July 29, 1983, the Park Commission, pursuant to N.J.S.A. 40:37-148.2, filed charges against Liguori seeking to divest him of his tenure. Liguori was specifically charged with unauthorized absences, refusal to carry out orders, creating a disturbance, defaming the Park Commission's Director and Assistant Director, and threatening the Assistant Director at the latter's home.

On December 13, 1983, the five commissioners of the Park Commission held a hearing on the charges against Liguori. Afterwards, they sustained the charges and discharged Liguori immediately.

Local 97 then demanded binding arbitration over Liguori's discharge and an arbitrator was appointed.[1/] The Park Commission filed a Complaint in the Chancery Division of the Superior Court and sought to restrain arbitration on two grounds: (1) the matter was not legally arbitrable since, under N.J.S.A. 40:37-148.2, the Park Commission was the final decider of the charges against Liguori; and (2) the matter was not contractually arbitrable since Article XII, titled Management Rights, authorized the employer to discharge employees for just cause and stated that any actions the Park Commission took under Article XII would not be grievable, thereby making Article IV inapplicable.

On June 1, 1984, the Honorable Arthur C. Dwyer, J.S.C., transferred to this Commission the portion of the Complaint alleging that the matter was not legally arbitrable. The Court

1/ The Park Commission asserts that Local 97 did not file a written grievance before demanding binding arbitration.

retained jurisdiction to determine whether the dispute is contractually arbitrable in the event this Commission found the dispute legally arbitrable.[2/] The instant petition ensued.

N.J.S.A. 34:13A-5.3 governs the question of whether a disciplinary discharge may legally be submitted to binding arbitration pursuant to a collectively negotiated agreement. That section, as amended effective July 30, 1982, 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

2/ We do not have jurisdiction in scope of negotiations cases to decide questions of contractual arbitrability or to review the merits of a contractual claim or defense. Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

> dispute covered by the terms of such agreement. (Emphasis supplied).

The Appellate Division of the Superior Court has issued two opinions defining when an employer may legally agree under N.J.S.A. 34:13A-5.3 to make binding arbitration an available review procedure for disciplinary determinations. See CWA v. City of East Orange, 193 N.J. Super. 658 (App. Div. 1984), certif. den. __ N.J. __ (1984) ("East Orange")[3/] and Bergen County Law Enforcement Group v. Bergen County Board of Freeholders, 191 N.J. Super. 319 (App. Div. 1983) ("Bergen County"). These opinions establish that a disciplinary dispute may be legally submitted to binding arbitration if the particular type of discipline administered is not subject to review under the Civil Service or other tenure law.

We now consider whether, as the Park Commission contends, N.J.S.A. 40:37-148.2 affords employees like Liguori the type of statutory protection which precludes binding arbitration. We believe it does not.

Prior to the passage of N.J.S.A. 40:37-148.2, Park Commission employees could be discharged at the will of the Park Commission. N.J.S.A. 40:37-148.2 changed this by providing that:

> Any full-time employee appointed to office, position or employment, pursuant to the provisions of R.S. 40:37-148, by a county park commission in any county of the second class having a population of

3/ East Orange actually involved the disposition of five consolidated cases: (1) East Orange; (2) County of Atlantic v. NJESO, App. Div. Dkt. No. A-4826-82T3; (3) Willingboro Bd. of Ed. v. Employees Assn of Willingboro Schools, App. Div. Dkt. No. A-5363-82T3; (4) Toms River Bd. of Ed. v. Toms River School Bus Drivers' Assn, App. Div. Dkt. No. A-5489-82T2; and (5) County of Morris v. Council No. 6, NJCSA, App. Div. Dkt. No. A-5560-82T2. Petitions for certification were denied in County of Atlantic and Willingboro.

> more than 460,000 and less than 525,000 according to the 1970 Federal census shall secure tenure of office after serving three successive 1-year appointments. Such employee shall hold and continue to hold said office, position or employment during good behavior and shall not be removed therefrom except for good cause upon written charges and after a public, fair and impartial hearing before the commission.

This statute, however, does not provide any statutory appeal procedure for contesting the Park Commission's determination that it did have good cause for disciplining an employee.

We perceive no conflict between permitting an employer to agree to binding arbitration under N.J.S.A. 34:13A-5.3 and affording an employee a species of tenure under N.J.S.A. 40:37-148.2. Read together, the statutes confer upon employees a right not to be discharged without good cause and a complementary opportunity, if the employer so agrees, to submit the justness of the employer's disciplinary determination to binding arbitration.

N.J.S.A. 40:37-148.2 was intended to afford certain employees a minimum level of job protection which would not have otherwise existed. It was not intended to shield the employer from all review of its disciplinary determinations. The statute thus extended employee rights, not employer prerogatives.

N.J.S.A. 34:13A-5.3 permits the negotiation of procedures, including binding arbitration, for reviewing an employer's disciplinary determination. The statute's purpose was to overrule case law holding that an employer could never agree to have an impartial and jointly chosen arbitrator review its disciplinary determinations. See State v. Local 195, IFPTE, 179 N.J. Super 146 (App. Div. 1981), certif. den. 89 N.J. 433 (1982) and Jersey

City v. Jersey City PBA, 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J. 433 (1982). While the bill (A-706) leading to this statute was amended before passage, N.J.S.A.34:13A-5.3, as interpreted in Bergen County and East Orange, only precludes binding arbitration if there is an alternate statutory appeal procedure for reviewing the particular disciplinary determination in question.[4/] Here, N.J.S.A. 40:37-148.2 does not prescribe any procedure for reviewing the Park Commission's determination.[5/] Binding arbitration fills that gap.

We finally note that maintenance employees without the job security afforded by N.J.S.A. 40:37-148.2 or other applicable statutes may clearly seek, and their employer may clearly grant, the right to submit disciplinary disputes to binding arbitration. See N.J.S.A. 34:13A-5.3; Plumbers and Steamfitters v. Woodbridge Bd. of Ed., 159 N.J. Super. 83 (App. Div. 1970); and Bergen County. We believe it would be incongruous to hold that employees who have been statutorily given a certain amount of job security,

4/ We have rejected arguments that statutes or regulations enacted before the amendment to N.J.S.A. 34:13A-5.3 and generally empowering employers to discharge employees without cause preempt an employer's ability to agree to binding arbitration under the amendment to N.J.S.A. 34:13A-5.3. See In re Mercer County Superintendent of Elections, P.E.R.C. No. 85-32, 10 NJPER ___ (¶_____ 1984); In re County of Hudson, P.E.R.C. No. 85-33, 10 NJPER ___ (¶_____ 1984). The Legislature's decision to allow binding arbitration under N.J.S.A. 34:13A-5.3 **supersedes any argument that an employer has a** unilateral right under a previous statute or regulation to discharge an employee without cause or any review.

5/ The County asserts that an action in lieu of prerogative writ is available under Romanowski v. Brick Twp., 185 N.J. Super. 197 (Law Div. 1982), aff'd O.B. 192 N.J. Super 79 (App. Div. 1983). East Orange, however, held that such an action does not displace a contractual commitment to binding arbitration under N.J.S.A. 34:13A-5.3. Further, the critical question under N.J.S.A. 34:13A-5.3 is whether a statute explicitly prescribes an appeal procedure; the statute here does not.

but no statutory appeal procedure insuring impartial third-party review of disciplinary determinations, are entitled to less protection under N.J.S.A. 34:13A-5.3 than maintenance employees who, although generally serving at the employer's will, may negotiate job security against unjust discharges and accompanying disciplinary review procedures including binding arbitration. East Orange. Accordingly, we hold that the instant dispute is arbitrable under N.J.S.A. 34:13A-5.3. Since the Superior Court has retained jurisdiction, we enter no order.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp and Suskin voted in favor of this decision. Commissioner Newbaker voted in opposition. Commissioners Graves and Wenzler were not in attendance.

DATED: Trenton, New Jersey
November 29, 1984
ISSUED: November 30, 1984