

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-94-71

ORANGE FMBA LOCAL NO. 10,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Orange FMBA Local No. 10 against the City of Orange Township. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a firefighter for four 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.

P.E.R.C. NO. 95-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-94-71

ORANGE FMBA LOCAL NO. 10,

Respondent.

Appearances:

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

For the Respondent, Fox and Fox, attorneys
(Dennis J. Alessi, of counsel)

DECISION AND ORDER

On February 4, 1994, the City of Orange Township petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Orange FMBA Local No. 10. The grievance asserts that the employer violated the parties' collective negotiations agreement when it suspended a firefighter for four days without just cause.

The parties have filed exhibits and briefs. These facts appear.

The City 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. 10 represents the City's firefighters, excluding superior officers. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

Joseph Zuppa is a firefighter. On July 8, 1993, he received a Preliminary Notice of Disciplinary Action from the employer. The notice charged him with feigning illness and failing to report to work during a snowstorm, insubordination in refusing to change a flat tire on a fire department vehicle, and leaving his house without permission while on sick leave. The notice advised Zuppa that he would be suspended from one to five days, removed, or fined and that he was entitled to a departmental hearing.

A departmental hearing was held on August 5, 1993. The hearing officer found Zuppa guilty of feigning illness to avoid work and leaving his house while on sick leave without first calling the department. Zuppa was suspended for four days. That suspension included the denial of one day of sick leave.

Local No. 10 filed a grievance which the City denied. Local No. 10 then demanded 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 arbitrability or merits of the grievance.

The City contends that our Supreme Court, in State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), invalidated the decade of precedent permitting employers to agree to arbitral review of minor disciplinary determinations against Civil Service employees covered by the discipline amendment, N.J.S.A. 34:13A-5.3. Local No. 10 responds that the sentence relied on by the City is dictum; the discipline amendment, as interpreted by the Appellate Division in 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. 1983), authorizes an employer to agree to arbitral review of minor disciplinary determinations; and the 1986 Civil Service Act, N.J.S.A. 11A:2-16, authorizes binding arbitration even if the discipline amendment does not.

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, 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.

ORDER

The request of the City of Orange Township 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