

[J-234-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA STATE POLICE,	:	No. 28 M.D. Appeal Dkt. 1998
	:	
Appellant,	:	Appeal from the Order of the
	:	Commonwealth Court dated July 24, 1997
v.	:	at No. 147 C.D. 1997, affirming a
	:	disciplinary grievance arbitration award.
	:	
	:	698 A.2d 688 (Pa.Cmwth. Ct. 1997)
PENNSYLVANIA STATE TROOPERS ASSOCIATION (TROOPER RODNEY SMITH),	:	ARGUED: November 17, 1998
	:	
Appellee.	:	

PENNSYLVANIA STATE POLICE,	:	No. 29 M.D. Appeal Dkt. 1998
	:	
Appellant,	:	Appeal from the Order of the
	:	Commonwealth Court dated July 24, 1997
v.	:	at No. 3028 C.D. 1996, affirming a
	:	disciplinary grievance arbitration award.
	:	
	:	698 A.2d 688 (Pa.Cmwth. Ct. 1997)
PENNSYLVANIA STATE TROOPERS ASSOCIATION (TROOPER ROBERT K. JOHNSON),	:	ARGUED: November 17, 1998
	:	
Appellee.	:	

CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: November 30, 1999

Due to the legislatively mandated limits on appellate review of Act 111 arbitration awards and this Court's recent expansion of limited review to grievance arbitration awards,

Pennsylvania State Police v. Pennsylvania State Troopers' Assn. (Betancourt), 656 A.2d 83 (Pa. 1995), I am constrained to join the result reached by the majority. I write separately to express my extreme discomfort that the decisions of the arbitrators in the instant cases are beyond appellate review and to propose that the third prong of the narrow certiorari standard be expanded in grievance arbitration cases to include review of arbitrators' powers where it appears that an arbitrator's decision is manifestly unreasonable, arbitrary and capricious.

The majority acknowledges, and I accept, that the rationale behind limiting appellate review is to ensure stability in the collective bargaining process.¹ Betancourt, 656 A.2d at 89. The majority also notes, and again, I accept, that when appellate review is prohibited by a legislative act, "appeal will lie to the Courts in the nature of a narrow certiorari..." Washington Arbitration, 259 A.2d 437, 440 (Pa. 1969)(citation omitted). One prong of the narrow certiorari standard encompasses review of whether an arbitration award exceeded the arbitrator's powers. Betancourt, 656 A.2d at 85. Here, however, the possibility of meaningful review of "unpalatable," "extremely distasteful" and "repugnant" arbitration awards is precluded by the restrictive definition of this prong of the narrow certiorari standard, as initially stated in Washington Arbitration and followed in Betancourt.²

While I agree that, under the current legislative scheme, the proper scope of review in Act 111 grievance arbitration awards is the narrow certiorari scope of review, I believe that an expansion of the scope of review in grievance arbitration cases is warranted where arbitrators ordered the State Police to reinstate Robert Johnson, who committed retail theft,

¹ Thus, the legislative purpose of precluding appellate review relates primarily to interest arbitration awards.

² This Court applied the narrow certiorari standard to grievance arbitration awards in Betancourt, reasoning that Act 111 authorizes grievance arbitration and that the legislative restrictions on appellate review should apply.

and Rodney Smith, who pled guilty to three counts of DUI, one count of simple assault and one count of making terroristic threats. State Troopers who commit acts such as these should not be permitted to continue to represent the Commonwealth's highest echelon of law enforcement. The citizens of Pennsylvania deserve the best men and women available to enforce the law of the Commonwealth and the State Police should not be forced to continue to employ those who are the subject of this case and who discredit the vast majority of officers who risk their lives on a daily basis for the citizens of this Commonwealth. Thus, in my opinion, the arbitrators' decisions that the State Police lacked just cause to dismiss Johnson and Smith were manifestly unreasonable, arbitrary and capricious. I believe that a legislative scheme that insulates such decisions from appellate review should be revisited by our legislature.

While I am constrained to join the result reached by the majority, I echo the sentiments of Judge Pellegrini, who stated in the Smith case that "it is incomprehensible that there is no review or accountability if an arbitrator makes such an irrational decision," Pennsylvania State Police v. Pennsylvania State Troopers' Assn. (Trooper Rodney Smith), 698 A.2d 688, 690 (Pa. Cmwlt. Ct. 1997), and concluded in the Johnson case that "something is terribly wrong when the state police cannot fire a trooper who is a thief!" Pennsylvania State Police v. Pennsylvania State Troopers' Assn. (Trooper Robert K. Johnson), 698 A.2d 686, 688 (Pa. Cmwlt. Ct. 1997)(J.Pellegrini, concurring). For these reasons, I believe that review under the narrow certiorari standard should be expanded in grievance arbitration cases.