

P.E.R.C. NO. 2002-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE
AND DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2002-9

F.O.P. LODGE NO. 155
(SUPERIORS),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Lodge No. 155 (Superiors). The grievance claims that the failure to reinstate a police sergeant violated a non-discrimination clause and a provision requiring that disciplinary charges be brought within 45 days. The Commission concludes that binding arbitration of major disciplinary disputes is precluded, even if there is a claim that the termination was discriminatorily motivated. The Commission restrains arbitration over the merits of the termination. The FOP's claim that the charges were untimely is procedural and legally arbitrable.

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, John J. Farmer, Jr., Attorney General
(Abdel Kanan, Deputy Attorney General, on the brief)

For the Respondent, Fusco & Macaluso, P.A., attorneys
(Nicole L. Masciarella, on the brief)

DECISION

On October 1, 2001, the University of Medicine and Dentistry of New Jersey petitioned for a scope of negotiations determination. UMDNJ seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Lodge No. 155 (Superiors). The grievance claims that the failure to reinstate a police sergeant violated a non-discrimination clause and a provision requiring that disciplinary charges be brought within 45 days.

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

The FOP represents all full-time sergeants employed by the University. UMDNJ and the FOP are parties to a collective negotiations agreement effective from July 1, 1999 through June

30, 2003. The agreement's grievance procedure ends in binding arbitration.

Article IV is entitled Discipline and Discharge. Section E provides:

An employee shall not be disciplined for acts which occurred more than forty-five (45) days after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based, except those acts which would constitute a crime. The employee's whole record of employment shall be considered with respect to the appropriateness of the penalty to be imposed.

On September 6, 2000, UMDNJ terminated police sergeant Lucille Holland. Holland was charged with conduct unbecoming an officer for violating departmental rules concerning inappropriate behavior. On the same date, the FOP filed a grievance alleging that the termination was unjust and that Holland was discriminated against because of her sex and race.

A step two grievance hearing was held. On February 16, 2001, the hearing officer issued a decision upholding the termination and denying the grievance.

On March 19, 2001, the FOP filed a Verified Complaint in Lieu of Prerogative Writ in the Superior Court seeking to have the hearing officer's decision reversed and to have Holland reinstated. The University filed an Answer on June 21, 2001. That matter is pending.

On April 19, 2001, the FOP filed another grievance alleging that the University had discriminated against Holland

because it had reinstated a white female officer who had been terminated for the same charges. The grievance also alleges violation of the 45-day rule set forth in Article IV, Section E. The grievance seeks reinstatement and that Holland be made whole. On May 4, the FOP demanded arbitration of the April 19 grievance, alleging that the University's actions violated several contractual articles. 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 merits of these grievances or any contractual defenses the employer may have.

UMDNJ seeks a determination that the second grievance may not proceed to arbitration because police officers may not seek arbitral review of terminations. UMDNJ relies on State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993); Rutgers, the State University, P.E.R.C. No. 96-22, 21 NJPER 356 (¶26220 1995); and New Jersey Institute of Technology, P.E.R.C. No. 98-3, 23 NJPER 449

(¶28210 (1997)). UMDNJ argues that the Superior Court has the jurisdiction to review this matter.

The FOP asserts that the alleged violation of the non-discrimination clause triggers arbitrable claims arising under other articles of the agreement -- e.g. recognition, management rights, non-discrimination, prior benefits and policy, and employee rights. The FOP also asserts that the violation of the 45-day rule is a procedural matter subject to arbitration. It relies on Rutgers; Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (¶26049 1995); and Town of Harrison, P.E.R.C. No. 95-111, 21 NJPER 247 (¶26157 1995). Finally, the FOP asserts that in Union Cty., P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), aff'd sub nom. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997), we held that State Troopers does not preclude arbitrators from considering whether the facts underlying a disciplinary action are accurate even if they cannot review the disciplinary penalty.

State Troopers continues to preclude binding arbitration of major disciplinary disputes involving police officers. That is so even if there is a claim that the termination was discriminatorily motivated. Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983) (claim of discrimination does not make non-negotiable claim legally arbitrable). Accordingly, we restrain binding arbitration over the merits of Holland's termination.

We distinguish the FOP's procedural claim. Even if a managerial decision is not mandatorily negotiable, the procedures related to making or reviewing that decision generally are. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993). Consistent with these precedents, we have held that procedures related to the timeliness of disciplinary charges for municipal and county police officers are, in general, mandatorily negotiable. See, e.g., Cherry Hill Tp., P.E.R.C. No. 93-77, 19 NJPER 162 (¶24082 1993); Middlesex Cty., P.E.R.C. No. 92-22, 17 NJPER 420 (¶22202 1991), aff'd NJPER Supp.2d 290 (¶231 App. Div. 1992); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); see also N.J.S.A. 40A:14-147. Nothing in State Troopers suggests that employers cannot agree to fair procedures for initiating and hearing disciplinary charges. Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (¶26049 1995). The FOP asserts that the charges against Holland were untimely. This contractual procedural claim does not go to the merits of the discipline and is legally arbitrable.

ORDER

The request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration is granted to the

extent the grievance seeks to challenge the merits of the termination of police sergeant Lucille Holland. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: December 20, 2001
Trenton, New Jersey
ISSUED: December 21, 2001