

P.E.R.C. NO. 91-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-91-40

STATE TROOPERS FRATERNAL
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the State of New Jersey's request for a restraint of binding arbitration of grievances filed by the State Troopers Fraternal Association. The grievances assert that the employer violated the parties' collective negotiations agreement when it held summary disciplinary hearings and suspended troopers rather than issue written reprimands. The Commission concludes that the STFA could have lawfully negotiated procedures to review the Superintendent's determination to impose these suspensions.

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Appearances:

For the Petitioner, Robert J. Del Tufo, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

For the Respondent, Loccke & Correia, attorneys
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On December 17, 1990, the State of New Jersey petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of grievances pressed by the State Troopers Fraternal Association ("STFA"). The grievances assert that the Superintendent of the New Jersey State Police violated the parties' collective negotiations agreement when he held summary disciplinary hearings and suspended troopers rather than issue written reprimands.

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

The Association represents State troopers. The parties entered into a collective negotiations agreement effective from July

1, 1987 to June 30, 1990. The grievance procedure covers grievances over written reprimands, but such grievances end with a final decision by the Attorney General. The grievance procedure excludes matters relating to removals or disciplinary actions resulting from hearings pursuant to State Police rules and regulations.

Article I of the State Police rules and regulations provides for three classifications of disciplinary proceedings: 1) a general disciplinary hearing which may result in a dismissal, a reduction in rank or grade, or an unpaid suspension, 2) a summary disciplinary hearing which may result in an unpaid suspension of a month or less, and 3) a written reprimand and an accompanying unpaid suspension of five days or less. The third written reprimand within two years may, in the alternative, subject the employee to such disciplinary hearing as the Superintendent may order. Article II specifies preliminary procedures and Article III specifies rules for conducting disciplinary hearings.

On February 9, 1989, Trooper John T. Christmann was ordered to appear at a summary disciplinary hearing. The charge alleged that Christmann had violated Division regulations requiring him to carry his weapon while on duty. Christmann's representative did not contest the factual basis for the charge, but asserted that in the past written reprimands had been issued for such offenses. The charge was sustained. Christmann was suspended without pay for four days.

On May 9, 1989, Trooper Hiram J. Ortiz, Jr. was ordered to appear at a summary disciplinary hearing. The charges alleged that Ortiz had violated Division regulations by: (1) willfully disobeying a superior officer's lawful written order concerning searches of female suspects, (2) behaving in an official capacity to his personal discredit and the Division's discredit by speaking abusively to a female suspect, and (3) performing his duty in a culpably inefficient manner by not searching a van when he had probable cause to suspect there was marijuana inside. A hearing officer concluded that charges 1 and 3 had been substantiated beyond a reasonable doubt and that charge 2 had not been substantiated. Ortiz was suspended without pay for eight days.

On May 12, 1989, Trooper Michael D. Karsevar was ordered to appear at a summary disciplinary hearing. The charge alleged that Karsevar's weapon had been lost or stolen. He was suspended without pay for four days.^{1/}

Christmann, Ortiz and Karsevar filed grievances asserting that in the past their offenses would have been punished by written reprimands and that their summary disciplinary hearings circumvented the grievance procedure and violated contractual clauses entitled "Complete Agreement" and "Non-Discrimination."^{2/} The grievances

^{1/} A fourth trooper, Dennis J. Haney, was ordered to appear at a summary disciplinary hearing on a charge of losing a portable radio, but that order was later rescinded. No disciplinary action was taken.

^{2/} Haney filed a similar grievance. The State alleges that this grievance is moot since no hearing was held and no discipline taken.

asked that the summary disciplinary hearing be quashed and written reprimands issued.

A hearing officer heard Christmann's grievance and recommended that it be denied. He concluded that the matter was not contractually grievable since it involved disciplinary action resulting from hearings pursuant to rules and regulations and that Christmann hadn't followed the established process for appealing discipline resulting from a hearing. He also concluded that the Superintendent has sole responsibility and discretion to administer the discipline he deems suitable for each violation and that he is not bound to issue a written reprimand for each similar violation. The Superintendent accepted these conclusions and denied Christmann's grievance. He also denied the grievances of Ortiz and Karsevar, stating that these grievances involved the same issues. The Association demanded binding arbitration of the grievances, now consolidated. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [78 N.J. at 154]

We specifically refrain from considering whether these grievances are contractually arbitrable or meritorious.

N.J.S.A. 34:13A-5.3 requires the employer to negotiate over disciplinary review procedures. See CWA v. P.E.R.C., 193 N.J. Super. 658 (App. Div. 1984). Nevertheless, the employer argues that N.J.S.A. 53:1-10 preempts all aspects of the disciplinary process.

That statute provides:

The superintendent shall, with the approval of the governor, make all rules and regulations for the discipline and control of the state police.

N.J.S.A. 53:1-10's broad grant of authority does not preempt the employer's obligation to negotiate procedures to review disciplinary determinations. It was enacted long before the amendment to N.J.S.A. 34:13A-5.3 which requires negotiations over disciplinary review procedures. It does not supplant that negotiations obligation. The STFA could have lawfully negotiated procedures to review the superintendent's determination to impose these suspensions.

N.J.S.A. 34:13A-5.3 also provides that disciplinary review procedures may end in binding arbitration unless there is an alternate statutory appeal procedure to review the particular type of discipline imposed. The general jurisdiction of the Appellate Division to review final decisions or actions of any state administrative agency or officer under R. 2:2-3(a)(2) is not such an alternate statutory appeal procedure. Contrast River Edge Bor., P.E.R.C. No. 91-50, 17 NJPER 2 (¶22001 1990) (N.J.S.A. 40A:14-147 et seq. provides alternate statutory appeal procedure for discharges,

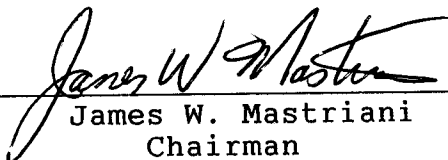
suspensions and fines of police); cf. E. Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-83T6 (3/19/85), certif. den. 101 N.J. 280 (1985) (general jurisdiction of Commissioner of Education under N.J.S.A. 18A:6-9 is not an alternate statutory appeal procedure).

The employer also argues that the negotiated grievance procedure, by its terms, does not apply to matters relating to removal or disciplinary action resulting from hearings. This is exactly the kind of argument that we cannot consider in this type of proceeding. See Ridgefield Park. The employer is free to raise to the arbitrator that the parties have agreed that arbitration is not to be used to review these disciplinary sanctions. But we have no authority to pass judgment on this argument because it is beyond the narrow boundaries of our jurisdiction. Ibid.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 20, 1991
Trenton, New Jersey
ISSUED: June 21, 1991