

P.E.R.C. NO. 95-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-94-96

KEARNY POLICEMEN'S BENEVOLENT  
ASSOCIATION, SUPERIOR OFFICERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Kearny Policemen's Benevolent Association, Superior Officers against the Town of Kearny to the extent that grievance seeks to contest the merits of the Town's decision to discipline four superior police officers. The Commission holds that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993) has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes that right.

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.

P.E.R.C. NO. 95-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-94-96

KEARNY POLICEMEN'S BENEVOLENT  
ASSOCIATION, SUPERIOR OFFICERS,

Respondent.

Appearances:

For the Petitioner, Shaljian, Cammarata & O'Connor,  
attorneys (Thomas J. Cammarata, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder, Montalbano, attorneys  
(David S. Solomon, of counsel)

DECISION AND ORDER

On April 21, 1994, the Town of Kearny petitioned for a scope of negotiations determination. The Town seeks a restraint of binding arbitration of a grievance filed by the Kearny Policemen's Benevolent Association, Superior Officers. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reprimanded four superior police officers for abusing their sick leave.

The employer has filed a brief and exhibits. The Association has filed a statement of position accepting the employer's statement of facts. These facts appear.

The Town 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.

The Association represents the employer's police sergeants, lieutenants, and captains. The parties entered into a collective negotiations agreement. Its grievance procedure ends in binding arbitration of contractual grievances. Article XXI requires just cause for discipline or discharge and subjects disciplinary disputes to the negotiated grievance and arbitration procedures. Article XXXIV specifies certain procedural rights for police officers charged with infractions, including rights to notice of the charges, a hearing, discovery, and counsel.

On February 11, 1993, the police chief charged four superior officers with chronic absenteeism. After departmental hearings, all four officers were found guilty. They were orally reprimanded.

On May 21, 1993, the Association filed a grievance asserting that the officers had been unfairly disciplined. The grievance asserts that several contractual provisions were violated, including Article XXXIV and other provisions pertaining to maximum disability pay and overtime pay for appearances before administrative and other tribunals. The grievance does not assert that the employer violated Article XXI.

Based on the information and belief of the Town's attorney, it appears that the Mayor and Council denied the grievance. The

Association demanded binding arbitration, identifying this grievance:

Whether the employer violated the contract by disciplining members of the bargaining unit without just cause and by failing to properly compensate members for attendance at their hearings.

An arbitration hearing was held, but the parties then agreed to have the arbitrator hold the case until this petition could be filed and decided. This petition ensued.<sup>1/</sup>

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 grievance's contractual arbitrability or merits.

The Town contends that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rev'g 260 N.J. Super. 270 (App. Div.

---

<sup>1/</sup> The employer does not seek a restraint of the portion of the arbitration demand seeking compensation for officers attending hearings.

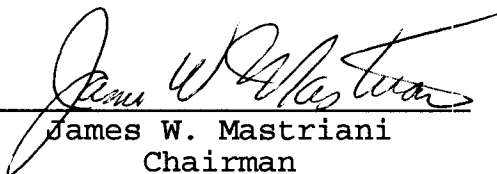
1992), bars arbitration over all minor disciplinary determinations against police officers. The Association responds that State Troopers does not bar arbitration over minor disciplinary determinations against police officers in a Civil Service community.

In Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER \_\_\_\_ (1\_\_\_\_ 1995), we held that the Supreme Court has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes that right. Applying that case to these facts, we restrain arbitration of the merits of the disciplinary determination.

ORDER

The request of the Town of Kearny for a restraint of binding arbitration is granted to the extent the grievance seeks to contest the merits of the Town's decision to discipline four superior police officers.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Commissioners Boose, Klagholz, Ricci and Wenzler voted in favor of this decision. Chairman Mastriani, Commissioners Buchanan and Finn voted against this decision.

DATED: March 24, 1995  
Trenton, New Jersey  
ISSUED: March 27, 1995