

P.E.R.C. NO. 2001-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY INSTITUTE OF TECHNOLOGY,

Petitioner,

-and-

Docket Nos. SN-2001-51 and
SN-2001-52

NEW JERSEY INSTITUTE OF TECHNOLOGY
SUPERIOR OFFICERS' ASSOCIATION and
FOP LODGE NO. 93,

Respondents.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey Institute of Technology for a restraint of binding arbitration of grievances filed by the New Jersey Institute of Technology Superior Officers' Association and FOP Lodge No. 93. The grievances contest the termination of two officers. State v. State Troopers Fraternal Ass'n, 134 N.J. 292 (1993) precludes binding arbitration of major disciplinary disputes involving police officers. Accordingly, the Commission restrains arbitration of these grievances.

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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Respondents.

Appearances:

For the Petitioner, Office of the General Counsel, NJIT
(Christine S. Li, Assistant Counsel)

For the Respondent, Fusco & Macaluso, P.A., attorneys
(Darryl M. Saunders, on the brief)

DECISION

On April 23, 2001, the New Jersey Institute of Technology filed two petitions for scope of negotiations determination. NJIT seeks restraints of binding arbitration of grievances filed by the New Jersey Institute of Technology Superior Officers' Association and FOP Lodge No. 93. The grievances contest the termination of two officers.

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

The SOA represents full-time commissioned police sergeants. The FOP represents all full-time commissioned police

officers below the rank of sergeant. NJIT and both the SOA and the FOP are parties to collective negotiations agreements effective from July 1, 1995 through June 30, 2001. Both agreements' grievance procedures end in binding arbitration.

The grievance procedures provide that an officer who is suspended without pay or discharged may file a grievance at step three of the grievance procedure. Step three provides for a hearing before the vice-president or his designee. Step four provides for arbitration and states that an arbitrator's decisions involving minor discipline, as defined by law, shall be final and binding.

William Rose is a sergeant and Lewis Turner is a police officer. Both were employed by NJIT's Department of Public Safety and Rose was Turner's supervisor.

On November 17, 2000, NJIT issued written charges containing 12 citations of misconduct and notified the officers of its intent to terminate their employment. Following a due process hearing on November 20, Turner was terminated immediately and Rose was terminated effective November 30, 2000.

On December 19, 2000, a step three grievance hearing was held. The hearing officer found that NJIT had just cause to terminate their employment.

On March 8, 2001, the FOP and the SOA demanded arbitration. These petitions 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.

NJIT seeks a determination that these grievances may not proceed to arbitration because police officers may not seek arbitral review of terminations. NJIT relies on our decision in New Jersey Institute of Technology, P.E.R.C. No. 98-3, 23 NJPER 449 (¶28210 (1997)).

The unions assert that, unlike the earlier NJIT case, these contracts provide for arbitration of major discipline and binding arbitration of minor discipline. In the alternative, the unions assert that if we determine that the contract does not provide a procedure for appealing major discipline, Section 2 of Article II of each agreement provides that the parties shall meet immediately to discuss a substitute for the invalidated article. The unions assert that N.J.S.A. 34:13A-5.3 requires the parties to negotiate and reduce to writing grievance and disciplinary review procedures.

As we stated in NJIT, State v. State Troopers Fraternal Ass'n, 134 N.J. 292 (1993), precludes binding arbitration of major disciplinary disputes involving police officers. Accordingly, we will restrain binding arbitration. The parties may legally agree to review of major discipline through non-binding arbitration. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983).

We deny NJIT's request for attorney's fees. See Commercial Tp. Bd. of Ed. v. Commercial Tp. Supportive Staff Ass'n, 10 NJPER 78 (¶15043 App. Div. 1983).

ORDER

The request of the New Jersey Institute of Technology for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, Muscato and Ricci voted in favor of this decision. Commissioners McGlynn and Sandman were not present.

DATED: May 31, 2001
Trenton, New Jersey
ISSUED: June 1, 2001