

P.E.R.C. NO. 94-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN,

Petitioner,

-and-

Docket No. SN-94-12

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 154

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Policemen's Benevolent Association, Local No. 154 against the Township of Franklin. The grievance asserts that a police officer was issued a letter of reprimand without just cause. The memorandum simply informs the officer, as required by the insurance company, that the officer has more moving violations than the insurance company believes is acceptable and advises the officer that his driving record will be checked periodically. The memorandum does not warn of any future discipline or trigger a schedule of discipline.

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Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the brief)

For the Respondent, Abramson and Liebeskind Associates
(Marc D. Abramson, consultant)

DECISION AND ORDER

On April 25, 1993, the Township of Franklin petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by a police officer represented by Policemen's Benevolent Association, Local No. 154. That grievance asserts that the officer was issued a letter of reprimand without just cause.

The Township has filed exhibits and briefs. The PBA received an extension of time, but did not file a brief. These facts appear.

The PBA represents the Township's rank-and-file police officers. The parties entered into a collective negotiations agreement effective from January 1, 1991 to December 31, 1992. The grievance procedure ends in binding arbitration.

On October 16, 1992, J. Gary Howarth, the Assistant Township Manager, wrote a memorandum to police officer Brian Gilmurray entitled Notification to Drivers of Point Accumulations or Loss of License. That memorandum stated:

The Township of Franklin is required by the insurance company to review annually all driving records for all individuals who drive Franklin Township vehicles.

Your record has been found to have more moving violations/points than are acceptable to the insurance company.

Your driving record will be checked periodically. Any further point accumulation or loss of license for any reason will not only prohibit you from operating a township vehicle, but further disciplinary action will be imposed.

On October 22, 1992, Captain Daniel J. Livak wrote a response on behalf of an upset Gilmurray. He noted that Gilmurray's last violation occurred before he was employed as a police officer and stated that the memorandum therefore did not apply.

On January 26, 1993, Howarth replaced the earlier memorandum with a revised memorandum entitled Notification of Moving Violations. This memorandum stated:

The Township is required by our insurance carrier to review driving records for each individual operating Township vehicles on an annual basis. Your record has been found to have more than the acceptable level of moving violations as set forth by the insurance company. Be advised that your driving record will be checked periodically.

According to another memorandum from Howarth to police officer Thomas Koolidge, the PBA representative, the Township's insurance carrier had demanded that it send a letter of awareness to all employees with moving violations or points.

On February 3, 1993, Koolidge wrote a letter to Howarth grieving the revised memorandum. The letter stated that the memorandum had been rewritten in the "best [way] that could be expected for this problem[,] " but the PBA membership believed that the memorandum could not be classified as evaluative, congratulatory or disciplinary and therefore should not be placed in Gilmurray's personnel file. The letter added that while the memorandum was "not accusatory or disciplinary in its wording[,] " it was in effect an accusation of an infraction that could lead to further disciplinary action. The letter requested that the memorandum be removed from Gilmurray's personnel file. Howarth denied this request.

On February 15, 1993, Koolidge forwarded the grievance to the Township Manager. Koolidge asserted that the memorandum in dispute must be disciplinary since it was not evaluative or congratulatory and he added that if the letter was meant to be advisory only it should be excluded from Gilmurray's personnel file. The Township Manager denied the grievance.

The PBA demanded binding arbitration. 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 this grievance or any contractual defenses the Township may have.

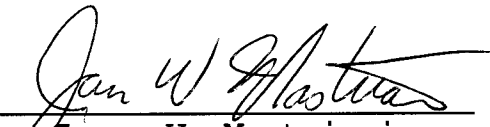
The PBA claims that the revised memorandum is a disciplinary reprimand reviewable through binding arbitration. See generally Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87). We disagree. The memorandum simply informs the officer, as required by the insurance company, that the officer has more moving violations than the insurance company believes is acceptable and advises the officer that his driving record will be checked periodically. The PBA does not dispute the facts set forth in the revised memorandum. As the PBA concedes, the memorandum is not disciplinary or accusatory in wording and indeed the Township had revised the earlier memorandum because it was. The memorandum does not warn of any future discipline or trigger a schedule of discipline. In addition, the Township has characterized this memorandum as informative, not disciplinary. Under all these circumstances, we conclude that the revised memorandum is not disciplinary and we restrain arbitration. Compare Town of Kearny, P.E.R.C. No. 92-40, 17 NJPER 481 (¶22233 1991) (restraining arbitration over notices recording employees' absenteeism statistics and informing employees they will be monitored); City of Newark, P.E.R.C. No. 90-95, 16 NJPER 265 (¶21113 1990) (restraining arbitration over daily

personnel reports containing statistics and other evaluative information); North Plainfield Bd. of Ed., P.E.R.C. No. 89-94, 15 NJPER 252 (¶20102 1989) (restraining arbitration over evaluation recording number of absences).^{1/}

ORDER

The request of the Township of Franklin for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino was not present.

DATED: March 29, 1994
Trenton, New Jersey
ISSUED: March 30, 1994

^{1/} Given this conclusion, we do not consider the employer's argument that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), precludes arbitration of any disciplinary disputes involving its police officers.