

P.E.R.C. NO. 95-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HARRISON,

Petitioner,

-and-

Docket No. SN-95-41

HARRISON POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 22,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Harrison Policemen's Benevolent Association, Local 22 against the Town of Harrison to the extent the grievance contests the merits of a suspension imposed against Daniel Nankivell. The Commission declines to restrain arbitration to the extent the grievance asserts that Nankivell did not receive the hearing required by N.J.S.A. 40A:14-147.

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, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel; James P. Madden, on the
brief)

For the Respondent, A.J. Fusco, Jr., P.A., attorneys
(A.J. Fusco, Jr., of counsel)

DECISION AND ORDER

On October 27, 1994, the Town of Harrison petitioned for a
scope of negotiations determination. The Town seeks a restraint of
binding arbitration of a grievance filed by a police officer
represented by the Harrison Policemen's Benevolent Association,
Local 22. The grievance contests a two-day suspension imposed
against the police officer.

The Town is a Civil Service jurisdiction. The Merit System
Board, formerly the Civil Service Commission, reviews certain
disciplinary determinations arising in Civil Service jurisdictions.
Suspension or fines of five days or less may not be appealed as of
right to the Merit System Board. The Board thus declined to review
the instant two-day suspension.

Local 22 represents the Town's police officers below the rank of chief. The grievance procedure in the parties' collective negotiations agreement requires the employer to process disciplinary charges in accordance with Civil Service rules and regulations and provides that minor discipline may be appealed to arbitration. Article IV, entitled Management Rights, states that the employer may discipline employees for just cause.

Daniel Nankivell is a patrol officer. The Town issued a Notice of Minor Disciplinary Action suspending him for two days. Nankivell was charged with conduct contrary to good order and discipline and neglect of duty as a result of his allegedly preventing another patrol officer from performing his duty.

Nankivell grieved his suspension, alleging in part that no hearing was held before the two-day suspension was imposed. The Town denied the grievance. Arbitration was then demanded. The demand asserted that the suspension violated the contract's just cause provision and that Nankivell did not receive the hearing required by N.J.S.A. 40A:14-147. This petition ensued.^{1/}

In Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER 153 (¶26092 1995), we held that the Supreme Court has precluded binding arbitration of the merits of minor disciplinary determinations involving police officers unless and until the Legislature

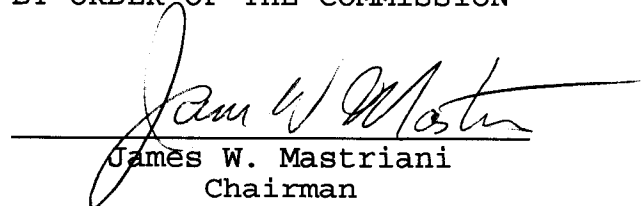
^{1/} After an arbitrator ruled that this dispute was arbitrable, arbitration of the merits of the grievance was adjourned until this petition could be resolved.

specifically authorizes that right. However, in Borough of Hopatcong, P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995), a companion case to Hudson, we declined to restrain arbitration of a procedural claim that a police officer had been denied the hearing required by N.J.S.A. 40A:14-147. Applying Hudson and Hopatcong to this case, we restrain arbitration over the merits of Nankivell's suspension, but decline to restrain arbitration over the claim that he did not receive the hearing required by N.J.S.A. 40A:14-147.

ORDER

The request of the Town of Harrison for a restraint of binding arbitration is granted to the extent the grievance contests the merits of the suspension imposed against Daniel Nankivell. The request is denied to the extent the grievance asserts that Nankivell did not receive the hearing required by N.J.S.A. 40A:14-147.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: June 12, 1995
Trenton, New Jersey
ISSUED: June 13, 1995