

P.E.R.C. NO. 95-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HACKENSACK,

Petitioner,

-and-

Docket No. SN-95-39

POLICEMEN'S BENEVOLENT ASSOCIATION,
HACKENSACK LOCAL NO. 9,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a police officer represented by the Policemen's Benevolent Association, Hackensack Local No. 9 against the City of Hackensack. The grievance contests a one day suspension. 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.

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Appearances:

For the Petitioner, Robert R. Guida, attorney

For the Respondent, Galantucci & Patuto, attorneys
(Robert L. Galantucci, of counsel)

DECISION AND ORDER

On October 25, 1994, the City of Hackensack petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by a police officer represented by the Policemen's Benevolent Association, Hackensack Local No. 9. The grievance contests a one day suspension.

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

The City is a Civil Service community. 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.

Local No. 9 represents the City's police officers, excluding the chief and the deputy chief. The parties entered into a collective negotiations agreement effective January 1, 1993 to December 31, 1995. Article XVII is entitled Management Rights. It states that the City retains the power to "discipline or discharge employees for just cause." The grievance procedure ends in binding arbitration of contractual disputes.

Anthony Ferraioli is a patrol officer. He was charged with certain violations of department rules and regulations as a result of an on-duty incident on June 11, 1994.^{1/} A hearing was held and the employer found him guilty. He was initially penalized by the loss of one furlough day to be worked at the patrol captain's discretion. The City Manager, however, changed the penalty to a one day suspension without pay.

Local No. 9 demanded 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

^{1/} In its demand for arbitration, Local No. 9 asserts that Ferraioli was charged with leaving his post at a soccer game to respond to a call involving someone pointing a gun at someone else.

questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual arbitrability or merits of this grievance.

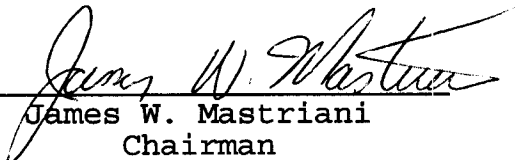
The City asserts that the grievance procedure does not apply to minor disciplinary determinations and Local No. 9 asserts that it does. The City also asserts that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rev'g 260 N.J. Super. 270 (App. Div. 1992), bars arbitration over all minor disciplinary determinations against police officers. The PBA 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 ____ (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 City of Hackensack for a restraint of binding arbitration is granted.

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