

P.E.R.C. NO. 95-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY SHERIFF and
COUNTY OF MONMOUTH,

Petitioners,

-and-

Docket No. SN-94-77

MONMOUTH COUNTY CORRECTION OFFICERS
ASSOCIATION, INC., PBA LOCAL 240,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Monmouth County Correction Officers Association, Inc., PBA Local 240 against Monmouth County Sheriff and the County of Monmouth. The grievance asserts that a three-day suspension of a correction officer violated the parties' collective negotiations agreement. 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 Petitioners, Robert J. Hrebek, attorney

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(David B. Friedman, of counsel)

DECISION AND ORDER

On March 1, 1994, the Monmouth County Sheriff and the County of Monmouth petitioned for a scope of negotiations determination. The petitioners seek a restraint of binding arbitration of a grievance filed by the Monmouth County Correction Officers Association, Inc., PBA Local 240. The grievance asserts that a three-day suspension of a correction officer violated the parties' collective negotiations agreement.

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

Local 240 represents the petitioners' correction officers. These employees are Civil Service employees. The Merit System

Board, formerly the Civil Service Commission, reviews certain disciplinary disputes involving Civil Service employees.

Suspensions and fines of five days or less may not be appealed as of right to the Merit System Board.

The parties entered into a collective negotiations agreement. Its grievance procedure ends in either a Civil Service appeal or binding arbitration. Article 9 provides, in part:

"Employees may be discharged, demoted or otherwise disciplined for just cause."

Carl Christie is a correction officer. He was suspended for three days for allegedly having a pattern of abusing sick leave.

On June 10, 1993, Local 240 filed a grievance contesting Christie's suspension. The grievance asserted that he had been improperly disciplined since the employer's regulations did not spell out a policy concerning patterns of sick leave abuse. The grievance was denied, the response stating that "pattern setting falls under the category of abusive sick time."

Local 240 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 grievance's contractual arbitrability or merits.

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 County of Monmouth and the Monmouth County Sheriff 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