

P.E.R.C. NO. 96-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE
UNIVERSITY,

Petitioner,

-and-

Docket No. SN-95-93

FRATERNAL ORDER OF POLICE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a police officer represented by the Fraternal Order of Police to the extent the grievance contests the merits of his termination by Rutgers, the State University. The Commission declines to restrain arbitration over the procedural claims that the officer was improperly denied a pre-termination hearing and union representation during an investigatory interview.

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, Christine B. Mowry, Assistant
Vice-President for Staff Affairs and Director, Office of
Employee Relations

For the Respondent, A.J. Fusco, Jr., P.A., attorney

DECISION AND ORDER

On April 24, 1995, Rutgers, the State University petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by a police officer represented by the Fraternal Order of Police. The grievance asserts that the employer violated the parties' collective negotiations agreement when it terminated the police officer without just cause and in violation of his due process rights.

The parties have filed an affidavit, exhibits and briefs. These facts appear.

The FOP represents a "primary" negotiations unit of the employer's commissioned police officers, sergeants and detectives.

The parties' collective negotiations agreement contains a grievance procedure ending in binding arbitration and encompassing disciplinary disputes.

David Caldwell was a commissioned police officer. On November 11, 1994, the police chief terminated him. The chief wrote a letter citing several bases for termination, including remarks allegedly made by Caldwell at a training session to prevent sexual harassment. According to the chief, Caldwell falsely and maliciously accused another police officer of criminal activity.

Caldwell filed a grievance. Asserting that he had been terminated without just cause, he sought reinstatement, back pay, and all lost benefits. He challenged the merits of the termination and he also alleged that he had been denied his due process rights, including a prior hearing and the opportunity to have union representation during an investigation of his alleged misconduct.

After conducting a step one grievance hearing, the police chief denied the grievance. The chief found that the discharge was warranted given Caldwell's prior disciplinary record and his "unsubstantiated and libelous allegations against members of the police department" at the training session. He rejected Caldwell's due process claims, concluding that Caldwell had received all the procedural rights specified by the parties' contract.

The grievance was also denied at the second step by the employer's Assistant Vice-President for Public Safety and at the third step by the Director of the employer's Office of Employee

Relations. They found that the contract did not require a pre-termination hearing (as opposed to a post-termination grievance hearing) and that Caldwell had not requested union representation during his investigatory interview.

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

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the employer may have. We specifically decline to consider whether the employer had just cause to terminate Caldwell or whether the parties' contract requires a pre-discipline hearing or any other procedural rights.

The employer contends that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), and our recent cases applying that decision preclude binding arbitration of the merits of disciplinary actions against police officers. See, e.g., Union Cty., P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), app. pending App. Div. Dkt. No. A-3416-94T1; Mt. Olive Tp., P.E.R.C. No. 95-44,

21 NJPER 65 (¶26047 1995). We agree with this proposition and will restrain arbitration of the merits of Caldwell's termination.


The FOP contends that other recent cases permit binding arbitration of claims asserting that a disciplined police officer was denied alleged procedural rights such as a pre-discipline hearing. See, e.g., Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (¶26049 1995);^{1/} Town of Harrison, P.E.R.C. No. 95-111, 21 NJPER 21 (¶26157 1995); cf. Cherry Hill Tp., P.E.R.C. No. 93-77, 19 NJPER 162, 164-165 (¶24082 1993) (proposal requiring pre-suspension hearing is mandatorily negotiable). We agree with this proposition as well and will accordingly decline to restrain arbitration over the procedural claims that Caldwell was improperly denied a pre-termination hearing and union representation during an investigatory interview.

^{1/} Consistent with the cases cited in the last paragraph, Mt. Arlington also restrained arbitration of the merits of the disciplinary determinations. While that case involved minor disciplinary actions and this case involves a termination, that distinction does not make a difference for purposes of applying State Trooper's prohibition against arbitrating the merits of disciplinary actions involving police officers.

ORDER

The request of Rutgers, the State University for a restraint of binding arbitration is granted to the extent the grievance contests the merits of the termination of David Caldwell. The request is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Finn abstained from consideration.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995