

P.E.R.C. NO. 2005-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Petitioner,

-and-

Docket No. SN-2004-046

P.B.A. LOCAL 366,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Bedminster for a restraint of binding arbitration of a grievance filed by P.B.A. Local 366. The grievance contests a reduction in an employee's salary as part of a disciplinary action. The Commission holds that disputes involving major discipline of police officers are precluded from binding arbitration.

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, Weiner Lesniak, LLP, attorneys
(Mark A. Tabakin, of counsel); DiFrancesco, Batemen,
Coley, Yospin, Kunzman, Davis & Lehrer, P.C., attorneys
(Jeffrey B. Lehrer, of counsel and on the brief;
Santina M. Bombaci, on the brief)

For the Respondent, Alterman & Associates, attorneys
(Stuart J. Alterman, on the brief)

DECISION

On February 20, 2004, the Township of Bedminster petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 366. The grievance contests a reduction in an employee's salary as part of a disciplinary action.

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

The PBA represents patrol officers and sergeants. The parties' current collective negotiations agreement is effective from January 1, 2001 through December 31, 2003. The grievance procedure ends in binding arbitration.^{1/}

On September 12, 2003, a Township police officer was charged with falsifying official blotter entries and incident reports in violation of police department rules and regulations. On September 23, the officer was suspended without pay. On October 5, the Township reevaluated the suspension, and continued it with pay, pending a disciplinary hearing.

Disciplinary hearings were held on December 8 and 13, 2003. On December 29, the Township committee concluded that the officer was guilty of the charges. Among other penalties, the officer was penalized 80 hours without pay, was stripped of any right to carry forward 135 hours of vacation leave, and was reduced from level 6 to level 2 on the salary scale. Beginning January 1, 2004, the officer could move up on the salary scale for each subsequent year if the officer met the contractual standard for salary guide movement.

On January 5, 2004, the PBA filed a grievance arguing that the contract does not allow for salary reductions for any reason.

^{1/} We take administrative notice that the Township is not a civil service jurisdiction.

On January 15, 2004, the chair of the Township's public safety and law committee denied the grievance. She stated that the imposition of discipline is not subject to negotiations, but is reserved to the exclusive discretion of the Township committee. She added that the officer may appeal the decision to the Superior Court. On February 2, the Township committee denied the grievance. On January 22, the PBA 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 do not consider the merits of the grievance or any contractual defenses the employer may have.

State v. State Troopers Fraternal Ass'n, 134 N.J. 292 (1993), precludes binding arbitration of major disciplinary

disputes involving police officers.^{2/} There is no dispute that the sanctions imposed on the grievant constitute major discipline. That is so whether or not the salary reduction would be considered a demotion. Accordingly, we will restrain binding arbitration.

N.J.S.A. 40A:14-147 provides an appeal procedure through which municipal police officers in non-civil service jurisdictions may appeal major disciplinary actions to the Superior Court. The court has full authority to review all aspects of the major discipline imposed. Cosme v. Borough of E. Newark, 304 N.J. Super. 191, 201-202 (App. Div. 1997), certif. den. 156 N.J. 381 (1998) (trial court has power to modify disciplinary sanction).

^{2/} N.J.S.A. 34:13A-5.3 was amended in 1996 to permit binding arbitration of disputes involving the minor discipline of any public employees except State troopers. Minor discipline means suspensions or fines of five days or less, unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year. Monmouth Cty. v. CWA, 300 N.J. Super. 272, 295 (App. Div. 1997).

ORDER

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

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: August 12, 2003
Trenton, New Jersey
ISSUED: August 13, 2004