

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2005-041

P.B.A. LOCAL NO. 11, TRENTON
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Trenton for a restraint of binding arbitration sought by P.B.A. Local No. 11, Trenton Superior Officers Association. The Association seeks to arbitrate disciplinary transfers, allegedly made in violation of statutes and regulations and without following appropriate procedures. The Commission holds that reassignments and transfers of police officers may not be submitted to arbitration even if the alleged transfer or reassignment is disciplinary. The Commission further holds that no severable procedural issues have been identified.

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.

P.E.R.C. NO. 2005-59

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Appearances:

For the Petitioner, Laufer, Knapp, Torzewski & Dalena,
LLC (Stephen E. Trimboli, on the brief)

DECISION

On January 10, 2005, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration sought by P.B.A. Local No. 11, Trenton Superior Officers Association. The Association seeks to arbitrate disciplinary transfers, allegedly made in violation of statutes and regulations and without following appropriate procedures.

The City has filed a brief and exhibits. The Association did not file a brief. These facts appear.

The Association represents sergeants, lieutenants, captains and deputy chiefs. The parties' collective negotiations agreement is effective from July 1, 2000 to December 31, 2005. The grievance procedure ends in binding arbitration.

On October 26, 2004, the Association filed a demand for arbitration. The Statement Identifying the Grievances to Be Arbitrated stated:

There have been a number of disciplinary transfers of unit members contrary to N.J.S.A. 34:13A-25 ^{1/} and other related statutes and regulations without justifiable basis and without following appropriate procedures. Since these transfers are occurring on a continuing basis and are extremely numerous, a full listing of those officers transferred will be supplied at the time of the arbitration, however. Included here are Captain Stu Hornyak, Lt. Thomas Murphy, Jr., Captain William Seaman, Captain Daniel McKee, etc.

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 contractual merits of the grievance or any contractual defenses the employer may have.

1/ N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons.

In three cases involving these parties, we have held that reassignments or transfers of police officers may not be submitted to arbitration, even if the alleged reassignment is disciplinary. City of Trenton, P.E.R.C. No. 2004-52, 30 NJPER 70 (¶23 2004); City of Trenton, P.E.R.C. No. 2004-53, 30 NJPER 71 (¶24 2004) and City of Trenton, P.E.R.C. No. 2004-54, 30 NJPER 72 (¶25 2004). Our holdings in those cases were based on the discipline amendment to section 5.3, as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993), and amended in 1996. That statute authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments or transfers of police officers. Union Cty. Sheriff, P.E.R.C. No. 2003-2, 28 NJPER 303 (¶33113 2002); Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998). Police officers who believe that they have been unjustly reassigned or transferred as a form of discipline must file a Superior Court action in lieu of prerogative writ. Monmouth Cty. v. CWA, 300 N.J. Super. 272, 289 (App. Div. 1997).

Absent any reason to distinguish our case law, we grant the City's request for a restraint of arbitration.^{2/}

^{2/} No severable negotiable procedural issues have been identified.

ORDER

The request of the City of Trenton 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, Fuller, Mastriani and Watkins voted in favor of this decision. Commissioner Katz was not present. None opposed.

DATED: March 31, 2005
Trenton, New Jersey
ISSUED: March 31, 2005