

P.E.R.C. NO. 2007-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Petitioner,

-and-

Docket No. SN-2006-086

FOP LODGE 62,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rutgers, The State University for a restraint of binding arbitration of a grievance filed by FOP Lodge 62. The grievance contests the termination of a police officer. The Commission holds that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), and Commission cases applying that decision preclude binding arbitration of the merits of major disciplinary actions against police officers.

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, Lisa T. Wahler, Associate General Counsel, on the brief

For the Respondent, Quinlan, Dunne & McConnell, LLC, attorneys (Timothy J.P. Quinlan, on the brief)

DECISION

On May 11, 2006, Rutgers, The State University petitioned for a scope of negotiations determination. The University seeks a restraint of binding arbitration of a grievance filed by FOP Lodge 62. The grievance contests the termination of a police officer.

The parties have filed briefs and exhibits.<sup>1/</sup> These facts appear.

The FOP represents police officers employed by the University. The parties' collective negotiations agreement is

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<sup>1/</sup> The FOP has requested oral argument. We deny that request as the matter has been fully briefed.

effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

On August 23, 2004, a University police officer was terminated for allegedly violating several department rules. The FOP filed a grievance that was denied at all steps of the grievance procedure. On March 4, 2005, the FOP 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 (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. [Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

The employer contends that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), and our cases applying that decision, preclude binding arbitration of the merits of major disciplinary actions against police officers. The FOP argues that State Troopers was intended to bar arbitration for State troopers only

and that Rutgers police officers should be able to seek outside redress similar to that afforded municipal police in both Civil Service and non-Civil Service jurisdictions.<sup>2/</sup>

In Rutgers, The State Univ., P.E.R.C. No. 96-22, 21 NJPER 356 (¶26220 1995), this employer sought a restraint of binding arbitration contesting the termination of a university police officer. We held that State Troopers precluded binding arbitration of the merits of the termination. Also applying State Troopers, the Appellate Division in Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997), declared that a provisional corrections officer could not arbitrate a major disciplinary determination even though the officer had no statutory review procedure available under Civil Service law. Under State Troopers and Monmouth, this police officer cannot seek arbitral review of his termination. Accord NJIT, P.E.R.C. No. 2001-69, 27 NJPER 239 (¶32083 2001) and NJIT, P.E.R.C. No. 98-3, 23 NJPER 449 (¶28210 1997) (restraining binding arbitration of major discipline of police officers). We have no authority to reject the Supreme Court's holding in favor of the FOP's equity arguments.

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<sup>2/</sup> We decline the FOP's request to await the outcome of a pending appeal in which the Appellate Division will consider a lower court's holding that it did not have authority to review a police officer's dismissal.

ORDER

The request of Rutgers, The State University for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: August 10, 2006

Trenton, New Jersey