

P.E.R.C. NO. 2008-31

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2008-020

NEW JERSEY TRANSIT PBA LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by New Jersey Transit PBA Local 304. The grievance challenges a police officer's five-day suspension. Because N.J.S.A. 34:13A-5.3 provides that the minor discipline of all public employees except State troopers may be submitted to binding arbitration pursuant to a negotiated agreement, the Commission denies NJT's request for a restraint of 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, Anne Milgram, Attorney General of New Jersey (Raymond C. Barzey, Deputy Attorney General, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Merick H. Limsky, on the brief)

DECISION

On November 8, 2007, New Jersey Transit Corporation ("NJT") petitioned for a scope of negotiations determination. The public employer seeks a restraint of binding arbitration of a grievance filed by New Jersey Transit PBA Local 304. The grievance challenges a police officer's five-day suspension. Because N.J.S.A. 34:13A-5.3 provides that the minor discipline of all public employees except State troopers may be submitted to binding arbitration pursuant to a negotiated agreement, we deny NJT's request for a restraint of arbitration.

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

The PBA represents NJT police officers below the rank of sergeant. The parties' collective negotiations agreement is effective from July 1, 2001 through June 30, 2006. Article XX provides that police officers shall not be suspended, removed or fired except for cause. The grievance procedure ends in binding arbitration.

On March 9, 2005, Police Officer Thomas Dietz was suspended for five days without pay for disciplinary reasons. On March 11, the PBA filed a grievance claiming that the suspension violated Article XX, past practice, and all other articles, policies, regulations, awards, decisions, guidelines, orders and/or relevant law.

In 1996, the Legislature amended section 5.3 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., to provide that disciplinary review procedures may provide for binding arbitration of disputes involving minor discipline of any public employees except State troopers. In Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997), the Court clarified that the amendment applies to all fines and suspensions of five days or less. This amendment displaced a previous ruling of the New Jersey Supreme Court that section 5.3 did not permit agreements to arbitrate any disciplinary disputes involving police officers. State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993).

NJT argues that even though only State troopers are statutorily exempt from the amendment permitting binding arbitration of minor discipline, that exemption should nevertheless be applied to NJT police officers because their jurisdiction and powers are in tandem with those of the State police. We, however, do not have the authority to add another exemption to the amendment. The Legislature has authorized the creation of a number of different police departments. Many, like NJT police, have broad statewide jurisdiction. See, e.g., N.J.S.A. 18A:6-4.5 (educational institution police have powers of police officers anywhere in the State); N.J.S.A. 40A:14-152.1 (municipal police have power to arrest anywhere within State); N.J.S.A. 27:25-15.1 (NJT police have general authority granted to police officers throughout the State). Any power to expand or contract the authority of these departments to negotiate over disciplinary disputes rests with the Legislature. See Rutgers, the State Univ., P.E.R.C. No. 2007-5, 32 NJPER 274 (¶113 2006), aff'd 33 NJPER 199 (¶70 App. Div. 2007) (Commission has no authority to reject Supreme Court's holding that university police may not arbitrate major discipline).

NJT also argues that arbitration cannot be invoked if it is not found in the contract. This argument goes to the issue of whether the parties in fact agreed to arbitrate disputes over minor discipline, not whether they could have agreed to do so.

N.J.S.A. 34:13A-5.3 expressly permits disciplinary review procedures providing for binding arbitration of minor discipline. Accordingly, we deny NJT's request for a restraint of binding arbitration. The question of whether the parties in fact agreed to arbitrate this disciplinary dispute is outside our limited scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

ORDER

The request of New Jersey Transit Corporation for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: November 20, 2007

Trenton, New Jersey