

P.E.R.C. NO. 2013-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2012-003

FRATERNAL ORDER OF POLICE,  
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rutgers, The State University of New Jersey for a restraint of binding arbitration of a grievance filed by fraternal Order of Police, Superior Officers Association. The grievance contests the demotion of a Rutgers University police officer. The Commission holds that police officers may not contest major disciplinary sanctions through 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.

P.E.R.C. NO. 2013-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY  
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2012-003

FRATERNAL ORDER OF POLICE,  
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Lisa T. Wahler, Associate General  
Counsel, of counsel

For the Respondent, Chamlin, Rosen, Uliano &  
Witherington, attorneys (Marcie L. Mackolin, of  
counsel)

DECISION

On July 15, 2011, Rutgers, the State University of New Jersey petitioned for a scope of negotiations determination. Rutgers seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Superior Officers Association. The grievance contests the demotion of a Rutgers University police officer.

The parties have filed briefs. Rutgers has filed the certification of its Chief of Police.

FOP represents full-time officers employed as University Police Sergeants and Senior Sergeants, Detectives, Senior

Detectives, and Lieutenants. Rutgers and FOP are parties to a collective negotiations agreement effective from July 1, 2006 through June 30, 2009. The grievance procedure ends in binding arbitration.

On July 9, 2007, the subject officer was promoted from police officer to sergeant. On May 29, 2008, a draft notice was sent to the Officer setting forth that the Chief was considering his demotion to police officer for his alleged inadequate performance as a sergeant. That notice ultimately became final. The FOP filed a grievance that was denied at all steps of the grievance procedure. The FOP demanded binding arbitration, and on September 2, 2010, filed a request for submission for a panel of arbitrators.

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]

Rutgers argues 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 disciplinary actions against police officers. FOP asserts that, based on the Doctrine of Laches, Rutgers should be prevented from asserting that this issue cannot proceed to binding arbitration since the officer may be time barred from seeking appellate review of the demotion.

The issue of the merits of this officer's demotion is not legally arbitrable. Police officers may not contest major disciplinary sanctions (suspensions of six days or more, demotions and terminations) through contractual binding arbitration procedures. N.J.S.A. 34:13A-5.3, as amended by L. 1996, c. 115; Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997).<sup>1/</sup> See also Rutgers, The State Univ., P.E.R.C. No. 96-22, 21 NJPER 356 (¶26220 1995), Rutgers, The State Univ., P.E.R.C. No. 2007-5, 32 NJPER 274 (¶113 2006), aff'd 33 NJPER 199 (App. Div. 2007). There is no time limitation within which an

---

1/ Monmouth Cty. is more relevant authority than State Troopers, which found that disputes over the merits of all police disciplinary sanctions, including minor discipline, are not legally arbitrable. State Troopers has been superseded by the Legislature. N.J.S.A. 34:13A-5.3, as amended by L. 1996, c. 115. However, both cases stand for the proposition that disputes over the merits of major disciplinary sanctions for police officers are not legally arbitrable.

employer must file a scope petition seeking to restrain grievance arbitration, except where grievance arbitration has been completed prior to the filing of a scope of negotiations petition. Keansburg Bd. of Ed., P.E.R.C. No. 87-77, 13 NJPER 70 (¶18030 1986).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Voos recused herself.

ISSUED: September 6, 2012

Trenton, New Jersey