

P.E.R.C. NO. 2013-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-099

PBA LOCAL 266,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grant, in part, the request of the City of Vineland for a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance contests two suspensions an officer received for violating the City's policy on leaving the City limits for meal breaks. The Commission holds that the PBA may arbitrate the two-day suspension as minor discipline is a mandatorily negotiable subject. The Commission restrains arbitration to the extent the grievance contests the 15-day suspension as major discipline for Civil Service employees many only be appealed to the Civil Service Commission.

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, Buonadonna & Benson, attorneys  
(Michael E. Benson, of counsel)

For the Respondent, Alterman & Associates, LLC,  
attorneys (Christopher A. Gray, of counsel)

DECISION

On May 21, 2010, the City of Vineland petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 266 on behalf of a police officer who was suspended twice for violating the City's policy on leaving the City limits for meal breaks. We grant a partial restraint of arbitration.

The parties have filed briefs. The City has filed exhibits and the certification of Chief Timothy Codispoti. The following facts appear.

The PBA represents all rank and file police officers. The City and PBA are parties to a collective negotiations agreement

with a duration from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

According to Chief Codispoti, the City has a "Chow Out of Town" policy that prohibits police officers from dining outside the City limits while on duty except when: 1) the officer is on a training or work assignment; 2) the employee is standing on the City border and can see their residence; and 3) upon request for extraordinary reasons. On July 16, 2008, an officer was directed to take a superior officer to his residence to determine whether it was visible from the City limits. The officer allegedly took his superior to a residence belonging to a relative of his girlfriend and not his own home. A disciplinary hearing was held on March 26, 2009 that resulted in the officer receiving a two-day suspension. The record does not indicate whether the officer was disciplined for violating the policy or being dishonest with his superior officer.

On November 24, 2009, the same officer was allegedly found on duty having a lunch break outside City limits in Buena Vista Township. A disciplinary hearing was held on May 10, 2010 resulting in the officer receiving a 15-day suspension.

The PBA filed a grievance. In its demand for binding arbitration, the PBA asserts:

The City of Vineland has violated the Contract (Maintenance of Standards) and Statutes Title 40 and Title 34, as to PBA local 266 and Officer [Name], wherein Officer

[Name] continues to be investigated for having chow out of town. [Name] is being treated differently than other officers/members of PBA Local 266 and is being investigated and disciplined for engaging in conduct engaged in by others employed by the City of Vineland. This violation occurred on December 11, 2009 and is continuous to date.

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.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State

Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

[Id. at 92-93; citations omitted]

Arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

N.J.S.A. 34:13A-5.3, The New Jersey Employer-Employee Relations Act (Act), as amended by P.L. 1996, c. 115, provides:

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation,

application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L. 1968, c. 303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S. 53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days 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.

The amendment modified a holding in State v. State Troopers Fraternal Ass'n, 134 N.J. 383 (1993), that police officers could not seek to arbitrate any disciplinary determinations. See Monmouth Cty. and CWA, 300 N.J. Super. 272, 289-291 (App. Div. 1997). (defining minor discipline as a suspension or fine of five days or less). However, State Troopers continues to prohibit

binding arbitration over removals of police officers. See Hudson Cty. Prosecutor, P.E.R.C. No. 98-141, 24 NJPER 291 (¶29137 1998); Cape May Cty. Prosecutor, P.E.R.C. No. 98-56, 23 NJPER 629 (¶28305 1997).

We take administrative notice that Vineland is a Civil Service jurisdiction. The City argues that the grievances infringe on its managerial prerogative to promulgate and enforce internal rules of procedure and conduct and raise a disciplinary matter related to one officer into a grievance applicable to all other officers.

The PBA responds that the matter of discipline and suspensions for dining outside of City limits is an item that directly affects the work and welfare of public employees. It asserts that the dominant concern here is discipline that an employee was arbitrarily subject to. The City replies that disciplinary action taken against a police officer is preempted by N.J.S.A. 40A:14-147 for the two-day suspension. That statute requires a municipality to: (1) file complaints charging police officers with violating departmental rules within 45 days of obtaining sufficient information to file a complaint, and (2) hold a hearing within 30 days of service of the complaint. It also asserts that Civil Service regulations preempt arbitration for the 15-day suspension.

We restrain binding arbitration to the extent the grievance contests the 15-day suspension. Major discipline for Civil Service employees can only be appealed to the Civil Service Commission. Monmouth Cty., P.E.R.C. No. 2010-58, 36 NJPER 42 (¶19 2010). We permit arbitration to the extent the grievance contests the two-day suspension. Under section 5.3 of the Act, the City and PBA may agree to arbitrate minor disciplinary disputes including suspensions or fines of five days or less. Monmouth Cty and CWA; Town of Guttenberg, P.E.R.C. No. 2005-37, 30 NJPER 477 (¶159 2004).

ORDER

The request of the City of Vineland for a restraint of binding arbitration is granted to the extent the grievance challenges the 15-day suspension. The request is denied to the extent the grievance challenges the two-day suspension.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted in favor of the decision except for restraining arbitration of the 15 day suspension. Commissioner Wall recused himself. Commissioner Bonanni was not present.

ISSUED: December 13, 2012

Trenton, New Jersey