

P.E.R.C. NO. 87-160

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Petitioner,

-and-

Docket No. SN-87-6

P.B.A. LOCAL 98,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which Policemen's Benevolent Association Local 98 filed against the Borough of Sayreville. The grievance alleges that the Borough violated the parties' collective negotiations agreement when it demoted a sergeant to patrol officer and suspended him for 60 days. The Commission finds that this grievance is preempted by Civil Service law.

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Appearances:

For the Petitioner, Pachman & Glickman, Esqs.
(Steven S. Glickman, of counsel)

For the Respondent, Weinberg & Kaplow, Esqs.
(Richard A. Kaplow, of counsel)

DECISION AND ORDER

On August 19, 1986, the Borough of Sayreville ("Borough") filed a Petition for Scope of Negotiations Determination. The Borough seeks to restrain binding arbitration of a grievance which Policemen's Benevolent Association Local 98 ("PBA") has filed. The grievance alleges that the Borough violated the parties' collective negotiations agreement when it demoted a sergeant to patrol officer and suspended him for 60 days.

The Borough has filed a brief and documents. The PBA has not. The following facts appear.

Sayreville is a Civil Service community. The PBA is the majority representative of its police sergeants and lieutenants. The Borough and the PBA have entered a collective negotiations

agreement effective from January 1, 1985 - December 31, 1987. The grievance procedure ends in binding arbitration.

On May 17, 1985, the police chief filed a preliminary notice of disciplinary action against Sergeant Phillip McCutcheon. McCutcheon was charged with attempting to influence other officers to recommend the downgrading of a motor vehicle ticket to persuade a relative of the ticket's recipient to sell McCutcheon real estate at a reduced price. On May 16, 1986, after a hearing before the Borough Council, McCutcheon received a final notice suspending him for 60 days and demoting him to patrol officer. On May 27, 1986, McCutcheon filed an appeal with the Civil Service Commission, now the Merit System Board. On May 28, 1986 the PBA filed a demand for arbitration. This petition ensued.

The Borough contends that N.J.S.A. 34:13A-5.3 bars binding arbitration of this grievance because the grievant is entitled to appeal and has in fact appealed his suspension and demotion to the Merit System Board.^{1/}

N.J.S.A. 34:13A-5.3 provides, in pertinent part:

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

^{1/} An Administrative Law Judge has recommended that the suspension and demotion be upheld. The matter is pending before the Merit System Board.

* * *

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, 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. 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. [Emphasis supplied].

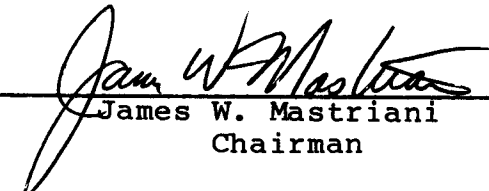
The right to appeal a disciplinary sanction to the Merit System Board supersedes any contractual right to binding arbitration. CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984), certif. den. 99 N.J. 169 (1984).

Under Civil Service law, an employee who is demoted or suspended more than five days at one time has a right of appeal. N.J.S.A. 11A:2-14, N.J.A.C. 4:1-16.7. Given that right of appeal, the grievance may not be submitted to binding arbitration. Woodbridge Tp. P.E.R.C. No. 86-39, 11 NJPER 626 (¶16219 1985); State of New Jersey, P.E.R.C. No. 85-70, 11 NJPER 48 (¶16026 1984).

ORDER

The Borough's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 17, 1987
ISSUED: June 18, 1987