

P.E.R.C. NO. 98-141

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY PROSECUTOR,

Petitioner,

-and-

Docket No. SN-98-63

HUNTERDON COUNTY P.B.A. LOCAL 358,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal of the Hunterdon County P.B.A. Local 358 during interest arbitration proceedings between the PBA and the Hunterdon County Prosecutor. The PBA has proposed to remove the ban against arbitration of disciplinary disputes and eliminate the two-tiered system and to permit arbitration of an appeal of a disciplinary determination. The Commission finds that review of major disciplinary determinations of police employees through binding arbitration is not mandatorily negotiable. Review of minor disciplinary determinations of police employees through binding arbitration is mandatorily negotiable.

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, Gaetano M. De Sapia, County Counsel
(Aaron R. Culton, on the brief)

For the Respondent, Klatsky & Klatsky, attorneys
(David J. DeFillippo, on the brief)

DECISION

On February 6, 1998, the Hunterdon County Prosecutor petitioned for a scope of negotiations determination. The petition seeks a determination that two successor contract proposals of Hunterdon County P.B.A. Local 358 are not mandatorily negotiable. In its brief, the PBA withdrew its "Career Development" proposal.

The parties have filed briefs and reply briefs and the Prosecutor has filed an affidavit. These facts appear.

The PBA represents employees in the ranks of investigator, investigator-first class, and sergeant. The parties' most recent contract expired on December 31, 1997. Article XV contains the grievance procedure. It excludes from

binding grievance arbitration any dispute involving discipline. Section 15.9.3 establishes how disciplinary grievances will be heard:

Grievances involving disciplinary determinations may not be arbitrated. The purpose of this limitation is to insure the resolution of disputes concerning the Prosecutor's right to hire, terminate or discipline an employee are determined in a court of law which would be governed by then applicable and articulated legal standards governing the extent of his constitutional and discretionary authority in these areas.

The parties have engaged in successor contract negotiations and are now in interest arbitration. The PBA has proposed to remove the ban against arbitration of disciplinary disputes and eliminate the two-tiered system and to permit arbitration of "[a]n appeal of a disciplinary determination."

Paterson Police PBA No. 1 v. 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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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. [87 N.J. at 92-93; citations omitted]

We will consider only whether the proposals are mandatorily negotiable. We do not decide whether contract proposals concerning police officers are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

N.J.S.A. 34:13A-5.3, as amended by 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).^{1/}

In Cape May Cty. Prosecutor, P.E.R.C. No. 98-56, 23 NJPER 629 (128305 1997), we restrained arbitration over the removal of an investigator by the county prosecutor. We stated:

While the Legislature later amended N.J.S.A. 34:13A-5.3 to authorize arbitration of minor disciplinary disputes involving police officers, State Troopers still prohibits arbitration over removals.

^{1/} Monmouth interprets that amendment to define minor discipline as a suspension or fine of five days or less.

State Troopers also prohibits arbitration over other major disciplinary determinations involving police officers. A proposal to subject such determinations to binding arbitration would not be mandatorily negotiable. A proposal to permit binding arbitration over minor disciplinary determinations would be mandatorily negotiable.

ORDER

Review of major disciplinary determinations of police employees through binding arbitration is not mandatorily negotiable. Review of minor disciplinary determinations of police officers through binding arbitration is mandatorily negotiable.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: May 27, 1998
Trenton, New Jersey
ISSUED: May 28, 1998