

P.E.R.C. NO. 96-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HAMILTON,

Petitioner,

-and-

Docket No. SN-95-111

ANTHONY RECINE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a police sergeant against the Township of Hamilton. The grievance asserts that the employer did not have a basis for issuing a written reprimand. The Commission holds that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), and recent cases applying that decision preclude binding arbitration of the merits of any disciplinary determination involving a police officer.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HAMILTON,

Petitioner,

-and-

Docket No. SN-95-111

ANTHONY RECINE,

Respondent.

Appearances:

For the Petitioner, Szaferman, Lakind, Blumstein, Watter & Blader, attorneys (Bill Mathesius, of counsel)

For the Respondent, Call & Covert, attorneys (John L. Call, Jr., of counsel)

DECISION AND ORDER

On June 20, 1995, the Township of Hamilton petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by police sergeant Anthony Recine. The grievance asserts that the employer did not have a basis for issuing a written reprimand.

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

The Superior Officers Association represents the Township's superior officers, including sergeants. The Township and the Association entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration; that procedure permits individual employees to demand arbitration. Article V is entitled Management Rights. Section 2 states:

The management and the conduct of the business of the Township, the scheduling and direction of its working force, and the disciplining of employees for just cause are the exclusive rights of this Employer, except as otherwise limited by statute or the terms of this Agreement.

Anthony Recine is a police sergeant. Disciplinary charges alleged that he had conducted "his private and professional life in such a manner as to bring this division into disrepute" and that he had neglected his duty. The Business Administrator conducted a hearing, found Recine guilty, and issued a written reprimand.

Recine demanded arbitration, asserting that the reprimand did not have an evidentiary basis and that he was entitled to recover counsel fees. After the first day of arbitration, the employer filed this petition.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

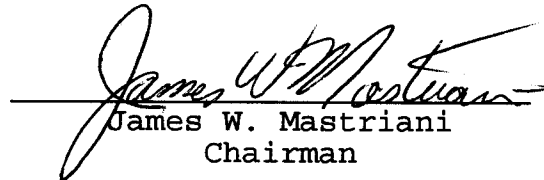
Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the employer may have. We specifically do not consider whether the employer had cause to reprimand Recine.

State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), and our recent cases applying that decision preclude binding arbitration of the merits of any disciplinary determination involving a police officer. See, e.g., Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER 153 (¶26092 1995), app. pending App. Div. Dkt. No. A-4698-94T1; Monmouth Cty. Sheriff, P.E.R.C. No. 95-70, 21 NJPER 155 (¶26093 1995); City of Hackensack, P.E.R.C. No. 95-71, 21 NJPER 155 (¶26094 1995). That the employer did not file its petition until after arbitration began does not warrant or permit a different result. We accordingly restrain binding arbitration.

ORDER

The request of the Township of Hamilton for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995