

P.E.R.C. NO. 88-131

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OCEAN,

Petitioner,

-and-

Docket No. SN-88-59

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 57,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, restrains binding arbitration of a grievance filed by PBA Local 57 against the Township of Ocean. The grievance protests a patrol officer's three day suspension. The Chairman finds that arbitration is preempted by N.J.S.A. 40A:14-147 to 151 which provides for a disciplinary review procedure to Superior Court.

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Appearances:

For the Petitioner, Mark S. Ruderman, Esq.

For the Respondent, Joseph N. Dempsey, Esq.

DECISION AND ORDER

On February 18, 1988, the Township of Ocean ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Local 57 ("PBA"). The grievance protests a patrol officer's three-day suspension.

The parties have filed briefs and documents.^{1/} These facts appear.

The PBA is the majority representative of the Township's full-time and probationary police officers. The PBA and the Township are parties to an agreement effective from January 1, 1988

1/ The PBA's request for oral argument is denied.

through December 31, 1990.^{2/} The contract's grievance procedure ends in binding arbitration. Article VII(d) provides that disciplinary action shall be taken for just cause. Article XVII(e) makes "penalties and suspensions" short of termination subject to the grievance procedure, but provides, "[s]hould an employee elect to use this grievance procedure, he will waive his rights to institute an action directly to the courts."

On April 23, 1987, Lt. Gerald Russommano filed charges against patrol officer Daniel West alleging neglect of duty on March 29, 1987. The charges alleged that the officer filed an incomplete report and then a false report of his questioning of youths in a neighborhood where thefts had been reported. A resident whose call had prompted the officer's dispatch allegedly observed West questioning one or more of the youths she had described. The initial report did not mention the interrogation and a supplemental report alleged that the youths he stopped did not match the resident's description.

The Township is a non-civil service jurisdiction. A hearing was held on August 26 and September 10, 1987 before the Township Manager, David R. Kochel. He issued a written decision on November 12, 1987 sustaining the charges and assessing a three-day unpaid suspension.

^{2/} This grievance arises under the agreement in effect during 1986-1987. The relevant provisions are unchanged in the current agreement.

On November 27, 1987, the PBA filed a Request for a Panel of Arbitrators. This petition ensued.^{3/}

The Township asserts that arbitration is preempted by the procedure provided in N.J.S.A. 40A:14-147 to 151. The Township cites Tp. of South Brunswick, P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986).

The PBA argues that N.J.S.A. 40A:14-151 was intended to make court review an option, not an exclusive forum for review of discipline of non-civil service employees. It contends that the Legislature could not so control the court's jurisdiction.

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

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures.... 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.

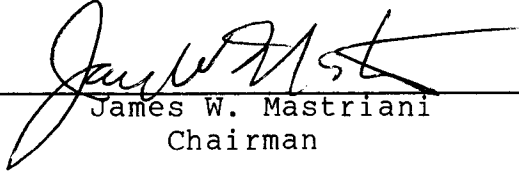
This grievance challenges discipline of a non-civil service police officer. Under South Brunswick, N.J.S.A. 40A:14-147 to 151 is an alternate statutory appeal procedure within the meaning of N.J.S.A. 34:13A-5.3. Acting pursuant to authority delegated to me by the full Commission, I find that arbitration is preempted.

^{3/} It is not untimely. See University of Medicine & Dentistry of New Jersey, P.E.R.C. No. 86-110, 12 NJPER 355 (¶17133 1986).

ORDER

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 27, 1988