

P.E.R.C. NO. 96-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-95-89

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of the seven grievances filed by Policemen's Benevolent Association, Local 304 against New Jersey Transit Corporation. The grievances contest the merits of certain disciplinary actions against New Jersey Transit police officers. Under N.J.S.A. 27:25-15.1, the scope of negotiations for NJT police officers is defined by the Employer-Employee Relations Act. Accordingly, the Commission finds that under State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), the merits of any disciplinary actions against NJT police officers cannot be submitted to binding arbitration.

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Appearances:

For the Petitioner, Deborah T. Poritz, Attorney General
(David S. Griffiths, Deputy Attorney General)

For the Respondent, Abramson and Liebeskind Associates
(Mark D. Abramson, consultant)

DECISION AND ORDER

On April 7, 1995, the New Jersey Transit Corporation ("NJT") petitioned for a scope of negotiations determination. NJT, a public employer, seeks a restraint of binding arbitration of seven grievances filed by Policemen's Benevolent Association, Local 304. The grievances contest certain disciplinary actions against NJT police officers.

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

Local 304 represents NJT's police officers below the rank of captain. The parties' collective negotiations agreement contains a grievance procedure empowering a tripartite Special Adjustment

Board -- consisting of an employer representative, a union representative, and a neutral member -- to issue final and binding decisions resolving disciplinary disputes. This grievance procedure has been in effect for over 20 years. NJT police officers have no other procedure for appealing disciplinary actions.

Local 304 seeks to arbitrate seven grievances involving disciplinary actions against NJT police officers. The details of the disciplinary charges and grievances are not in the record. NJT filed the instant petition seeking to restrain arbitration under State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993).

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 do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

N.J.S.A. 27:25-15.1 established the NJT police department. Subsection a grants NJT police officers "general authority, without limitation, to exercise police powers and duties, as provided by law for police officers and law enforcement officers, in all criminal

and traffic matters at all times throughout the State...."


Subsection (b) specifies that the "terms and conditions of ... labor contracts [must be] within the scope of negotiations as defined by the Public Employment Relations Commission under the New Jersey Employer-Employee Relations Act." Contrast In re NJ Transit Bus Operations, Inc., 125 N.J. 41 (1991) (defining different scope of negotiations for NJT bus employees).

State Troopers construed the Employer-Employee Relations Act as not authorizing binding arbitration of the merits of any disciplinary actions against any police officers -- State, county or municipal. See also Union Cty., P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), app. pending App. Div. Dkt. No. A-3416-94T1; Borough of Hopatcong, P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995). We recognize that NJT police officers have had disciplinary determinations reviewed through arbitration in the past and that there is no other forum for neutral review of disciplinary actions. Nevertheless, N.J.S.A. 27:25-15.1 requires that the scope of negotiations for NJT police officers be that as defined by the Employer-Employee Relations Act. There is no basis to treat NJT police officers differently from other police officers. We accordingly restrain arbitration over the merits of disciplinary action against NJT police officers.

ORDER

The request of the New Jersey Transit Corporation for a restraint of binding arbitration of the seven grievances contesting the merits of the disciplinary actions against its police officers is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: March 28, 1996
Trenton, New Jersey
ISSUED: March 29, 1996