

P.E.R.C. NO. 96-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Petitioner,

-and-

Docket No. SN-95-84

STATE LAW ENFORCEMENT CONFERENCE
OF THE NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION (LAW ENFORCEMENT UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of grievances filed by the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Law Enforcement Unit) against the State of New Jersey (Department of Corrections). The grievances contest two five-day suspensions imposed against correction officers. 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 these disciplinary determinations.

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, Deborah T. Poritz, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Robert A. Fagella, on the brief)

DECISION AND ORDER

On March 28, 1995, the State of New Jersey (Department of Corrections) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of two five-day suspensions imposed against correction officers represented by the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (Law Enforcement Unit) ("SLEC/PBA").

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

SLEC/PBA represents certain law enforcement officers employed by the State of New Jersey, but excluding State troopers.

The parties entered into a collective negotiations agreement effective from July 1, 1992 through June 30, 1995. Article XII is entitled Discipline and provides that "[d]iscipline shall be imposed only for just cause." Section J sets up a "Joint Association Management Panel" to review appeals of disciplinary suspensions of one through five days. If the panel cannot resolve an appeal, the neutral member of the panel decides whether the issues warrant arbitration.

John F. Hann, Jr. is a senior correction officer holding a classified Civil Service position. He received a Preliminary Notice of Disciplinary Action charging him with negligently shutting cell doors on the hands and arms of two inmates; the notice called for a ten day suspension. At a departmental hearing, the original charges were replaced by a charge alleging a serious mistake due to carelessness which could cause serious danger and/or injury to persons or property and the penalty was reduced to a five day suspension. Hann appealed this suspension pursuant to Section J of Article XII. The panel could not agree on how to resolve the appeal and the neutral member recommended arbitration.

Gertrude Csizmadia is a senior correction officer holding a classified Civil Service position. She received a Preliminary Notice of Disciplinary Action charging her with being absent from work without permission and calling for a five day suspension. At a departmental hearing, the charge and penalty were upheld. Csizmadia appealed this suspension pursuant to Section J. The panel could not

agree on how to resolve the appeal and the neutral member recommended arbitration.

SLEC/PBA demanded arbitration of both suspensions. This petition ensued.

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.

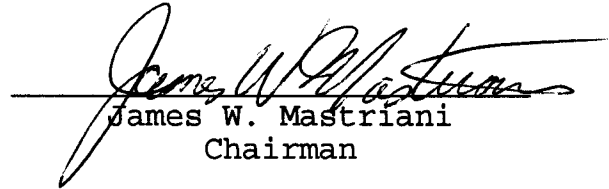
Thus, we cannot consider whether the employer had just cause to suspend either employee or any other contractual issues.

The employer contends that 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 these disciplinary determinations. 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). We agree and will restrain arbitration accordingly. We decline SLEC/PBA's invitation to revisit these decisions or to stay them and will instead await further guidance from our appellate courts.

ORDER

The request of the State of New Jersey (Department of Corrections) 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