

P.E.R.C. NO. 99-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-98-107

P.B.A. LOCAL 38,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Woodbridge for a restraint of binding arbitration of a grievance filed by P.B.A. Local 38. The grievance alleges that disciplinary actions taken by the Township against four police officers were procedurally improper and violated the parties' collective negotiations agreement. The Commission finds that the grievance asserts that contractual procedures were violated during the investigation of the incidents prompting the discipline and seeks a directive that the employer adhere to those negotiated procedures. The grievance does not challenge the suspensions received by the officers who chose not to exercise their right to contest their major discipline before the Merit System Board. The grievance may be resolved in binding arbitration.

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, Genova, Burns & Vernioia, attorneys
(Robert C. Gifford, Jr., on the brief)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, P.C.,
attorneys (Sanford R. Oxfeld, on the brief)

DECISION

On June 26, 1998, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 38. The grievance alleges that disciplinary actions taken by the Township against four police officers were procedurally improper and violated the parties' collective negotiations agreement.

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

^{1/} On May 11, 1998, the PBA filed an unfair practice charge alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it failed to provide documents to the PBA regarding the

Footnote Continued on Next Page

The Township is a Civil Service jurisdiction. The PBA represents the Township's police officers. The Township and the PBA are parties to a collective negotiations agreement with a grievance procedure ending in binding arbitration.

Article II, Management Rights, provides that the Township has the right to suspend, demote, discharge or take other disciplinary action for good and just cause according to the law.

Article XXV, Bill of Rights, provides, in part:

B. Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency for any reason which could lead to disciplinary action, demotion, loss of pay or dismissal, the investigation or interrogation shall be conducted under the following conditions:

1. The interrogations shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

* * *

3. Upon interrogation, the law enforcement officer shall be informed of the name, rank and command of the officer in

1/ Footnote Continued From Previous Page

disciplinary actions. The charge seeks the entire investigation files of the four police officers to ascertain whether procedural safeguards in the parties' agreement have been violated. A Township motion for summary judgment in that case has been denied. Woodbridge Tp., H.E. No. 99-2, 24 NJPER 376 (129177 1998). At the parties' request, a hearing on the charge has been held in abeyance pending this determination.

charge of the investigation, the interrogating officer and all persons present during the interrogation. All questions directed to the officer under the investigation shall be asked by and through one interrogator as often as possible.

4. No departmental charges shall be preferred against a law enforcement officer unless a complaint be duly sworn to before an official authorized to administer the oath.

* * *

7. The law enforcement officer under investigation and/or interrogation shall not be threatened with transfer, dismissal or disciplinary action.

* * *

9. If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he/she shall be completely informed of all his/her rights prior to the commencement of the interrogation.

C. No law enforcement agency shall insert any adverse material into the file of the officer unless the officer has had an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the officer waives these rights.

On February 16, 1998, major disciplinary charges were brought against four police officers. On March 11, the four officers entered into voluntary settlements. Each officer received a suspension without pay ranging from two to six months.

The PBA filed a class action grievance. The grievance alleges violations of Article I-Agreement, Article II-Management Rights and Article XXV-Bill of Rights. The grievance asserts that the disciplining of the four officers was "procedurally improper." It seeks a remedy directing the Township to "adhere to the specific provisions of the collective bargaining agreement that provide procedural safeguards when an officer is under investigation." The Township denied the grievance at each step of the negotiated procedure. On May 15, 1998, the PBA demanded arbitration. 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 do not consider the contractual merits of this grievance or any contractual defense the Borough may have.

The Township asserts that the PBA seeks a determination as to whether the discipline was for just cause. It states that the officers chose not to file appeals with the Merit System Board

over their suspensions and that these major disciplinary actions are not arbitrable. The Township further asserts that the files which the PBA seeks to review are internal affairs investigator reports which contain witness statements and are confidential. It states that the PBA can review the transcripts of the internal affairs interviews to ascertain whether any procedures have been violated.

The PBA asserts that its grievance seeks to determine whether the terms of the negotiated agreement have been violated and does not challenge the suspensions. The Township's reply brief asserts that if the PBA is trying to determine only whether the Township adhered to procedural safeguards, we must issue an order barring an arbitrator from issuing a remedy which would modify the suspensions.

Under N.J.S.A. 34:13A-5.3, fines or suspensions of more than five days in Civil Service jurisdictions may not be contested through binding arbitration. Such disciplinary actions may be contested through an appeal to the Merit System Board.

This grievance does not challenge the suspensions received by the officers who chose not to exercise their right to contest their major discipline before the Merit System Board. The grievance instead asserts that contractual procedures were violated during the investigation of the incidents prompting the discipline and it seeks a directive that the employer adhere to those negotiated procedures. Such a grievance seeks to maintain the viability of contractual rights for all negotiations unit

employees who, in the future, may be subject to disciplinary investigations.

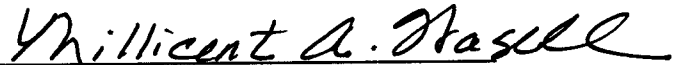
The Township does not assert that any of the parties' negotiated pre-discipline procedures are non-negotiable. See, e.g., Borough of Hopatcong, P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995), recon. den. P.E.R.C. No. 96-1, 21 NJPER 269 (¶26173 1995), aff'd sub nom. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997); Rutgers v. FOP, P.E.R.C. No. 96-22, 21 NJPER 356 (¶26220 1995); Cherry Hill Tp., P.E.R.C. No. 93-77, 19 NJPER 162 (¶24082 1993); Middlesex Cty., P.E.R.C. No. 92-22, 17 NJPER 420 (¶22202 1991), aff'd NJPER Supp.2d 290 (¶231 App. Div. 1992). The PBA has not challenged the disciplinary actions. The employees entered into voluntary settlements and did not file appeals with the Merit System Board. We note that appeals of major disciplinary actions must be presented through the statutory appeal mechanism instead of binding arbitration. We further note that we have restrained arbitration where statutory procedural claims were intertwined with the claim that a police officer should not have been terminated. See, e.g., City of Newark, P.E.R.C. No. 99-48, ___ NJPER ___ (¶_____ 1998); City of Newark, P.E.R.C. No. 99-24, 24 NJPER 477 (¶29222 1998); see also N.J.S.A. 34:13A-5.3; N.J.S.A. 11A:2-14.^{2/}

^{2/} The PBA's request for information is an issue in the unfair practice case. The PBA's grievance does not raise that issue and we will not address it in this scope of negotiations proceeding. Any confidentiality issues can be addressed at an unfair practice hearing. H.E. No. 99-2 at 4.

ORDER

The request of Woodbridge Township for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998