

P. E. R. C. NO. 82-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-82-49

KEARNY CIVIL SERVICE COUNCIL
#11,

Respondent.

SYNOPSIS

Acting on authority delegated to the Chairman by the full Commission, the Chairman finds, based upon existing applicable case law, that a contract clause allowing disciplinary grievances to proceed to grievance arbitration is a non-mandatory subject of negotiations.

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Appearances:

For the Petitioner, Kenneth P. Davie, Esq.
Assistant Town Attorney

For the Respondent, Fox and Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION AND ORDER

On January 18, 1982, the Town of Kearny (the "Town") filed a Petitioner for Scope of Negotiations Determination with the Public Employment Relations Commission.^{1/} The Town contends that an existing contract clause allowing disciplinary grievances to proceed to grievance arbitration is an illegal subject of negotiations.

Both parties have filed briefs with respect to this issue. The Town and Kearny Civil Service Council #11 ("Council 11") are parties to the collectively negotiated agreement which expired on December 31, 1981 and are in the process of negotiations for a successor agreement. The contractual provision in dispute,

^{1/} In its Petition for Scope of Negotiations Determination, the Town challenges the negotiability of six provisions of its existing agreement with Council 11. This decision deals solely with one of the six issues in dispute; Article XIX Discharge.

Article XIX Discharge or Suspension, reads as follows:

No employee shall be disciplined or discharged without just cause. An employee who has been disciplined or discharged may grieve such action in accordance with the provisions hereinafter set forth entitled "Grievance Procedure" and "Arbitration".

The parties' arbitration clause, Article XXI, permits an unresolved grievance to proceed to binding arbitration except pursuant to Section 5 "where an employee has exercised his right of appeal as expressly granted in the Revised Civil Service Rules or Statutes of New Jersey, there shall be no right to arbitration under the provisions of this Article."

The Town asserts that Article XIX is preempted by the New Jersey Civil Service statutes and thus not a mandatory subject for collective negotiations. State of New Jersey v. State Supervisory Employees, 78 N.J. 54 (1978). Council #11 concedes that applicable court decisions have rendered the matter of discipline under these circumstances, to be non-negotiable. State of New Jersey v. Local 195, IFPTE, 179 Super 146 (App. Div. 1981) pets. for certif. den. and City of Jersey City, 179 N.J. Super 137 (App. Div. 1981) pet. for certif. den. However, it argues that the existing contractual provision should be held to be mandatorily negotiable if the final step of the arbitration clause was advisory as opposed to binding. In support of this position it cites Bd. of Ed. of Bernards Tp. v. Bernards Tp. Ed. Assn, 79 N.J. 311, 325 (1979), wherein the Supreme Court held that it was mandatorily negotiable to submit managerial decisions to advisory arbitration.

After thorough review of applicable law relating to the negotiability of issues involving discipline, I conclude that the

provision in dispute, Article XIX, is not a mandatory subject of negotiations.

It is clear under the state of applicable law that the existing contractual provision is a non-mandatory subject of negotiation. As to Council #11's position that the clause be deemed mandatorily negotiable under an advisory arbitration provision, there is no evidence that this issue has been presented in collective negotiation or is the subject of a dispute between the parties.^{2/} In accordance with prior Commission decisions, I will decline to decide an issue which is not the subject of an existing dispute.

ORDER

With respect to the matter determined herein to relate to a non-mandatory subject for negotiations, acting under the authority delegated to the Chairman by the full Commission, IT IS HEREBY ORDERED that Kearny Civil Service Council #11 is to refrain from insisting to the point of impasse upon inclusion of such matter in a collectively negotiated agreement with the Town of Kearny.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 27, 1982

2/ In re Camden County Bd. of Chosen Freeholders, P.E.R.C. No. 81-56, 6 NJPER 544 (¶11375 1980) and In re Cinnaminson Twp. Board of Education, P.E.R.C. No. 78-11, 3 NJPER 323 (1977).