

P.E.R.C. NO. 95-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MT. OLIVE,

Petitioner,

-and-

Docket No. SN-94-67

MT. OLIVE TOWNSHIP
FOP LODGE NO. 122,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a police officer represented by Mt. Olive Township FOP Lodge No. 122 against the Township of Mt. Olive. The grievance asserts that the employer violated the parties' collective negotiations agreement when it ordered a police officer whose duty revolver had been stolen to pay for a new weapon. The Commission finds that the Supreme Court's decision in State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), established that the discipline amendment does not authorize police officers to seek review of a disciplinary action through binding arbitration.

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Appearances:

For the Petitioner, Joseph J. Bell Jr., attorney

For the Respondent, Whipple, Ross and Hirsch, attorneys
(Donald B. Ross, Jr., of counsel)

DECISION AND ORDER

On January 31, 1994, the Township of Mt. Olive petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by a police officer represented by Mt. Olive Township FOP Lodge No. 122. The grievance asserts that the employer violated the parties' collective negotiations agreement when it ordered a police officer whose duty revolver had been stolen to pay for a new weapon.

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

Lodge 122 represents the employer's police officers below the rank of lieutenant. The parties entered into a collective negotiations agreement. Its grievance procedure ends in binding arbitration of contractual disputes. Article XV, entitled

Management Rights, recognizes the employer's right "to take disciplinary actions as necessary."

A Township ordinance covers the loss of police equipment.

Section 48-25B provides:

The necessary uniforms and equipment for the performance of police duty will be furnished by the Township of Mount Olive, and the Chief of Police shall keep an accurate record of the distribution and use thereof. Lost or damaged equipment must be immediately reported to the Chief of Police. If the Chief of Police is of the opinion that the loss or damage was due to willfulness or neglect, he shall report the matter to the Mayor, who shall decide whether or not the value of such property shall be paid by the person responsible for such loss or damage.

Scott Van Ness is a patrol officer. At about 3:00 a.m. on July 15, 1993, his personal car was broken into while it was parked on a street corner in New York City and his duty revolver was stolen from a locked console compartment. Van Ness reported the theft to the New York City police.

On July 22, 1993, the captain in charge of the Township's police department in the chief's absence notified Van Ness that the Township would provide him a replacement revolver for 30 days, but Van Ness would have to buy a new weapon. He was informed that he could arrange for periodic payments through the payroll department.

Van Ness filed a grievance. He asked the Township to buy the new weapon. He asserted that the Township owned the revolver and should have taken out an insurance policy against theft; he had been the victim of a crime; and the police department had not provided secure locations to store property.

In a handwritten response, the captain denied the grievance. He found that the grievance was untimely and did not concern a contractual item. He also asserted that Van Ness could have stored his gun in his locker, a gun locker, or the armory. The employer has also submitted a typewritten response from the captain to Van Ness. This response stated that the grievance was untimely; Van Ness had violated departmental regulations by taking his weapon across state lines; and the loss of the weapon was due solely to his lack of reasonable care.

Lodge 122 appealed to the Business Administrator. On October 26, 1993, he too denied the grievance. He asserted that the ordinance empowered the Mayor to demand reimbursement for the lost weapon and that the grievance did not raise a contractual issue. He added that Van Ness had until October 31 to make arrangements to pay for the weapon and that if he did not, he would be suspended indefinitely without pay until he did so.

On November 1, 1993, the Business Administrator notified the chief that Van Ness had not responded by October 31 so he was suspended. Van Ness apparently then agreed to reimburse the employer for a new weapon.

On December 29, 1993, Lodge 122 demanded binding arbitration. It identified this grievance:

Imposition of disciplinary action and fine against Officer Scott Van Ness in the amount of \$422 resulting from the theft of his weapon in the City of New York. The disciplinary action was taken without good and just cause and the agreement of the Officer Van Ness to reimburse

the Township was extracted under duress and without justification.

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 grievance's contractual timeliness, arbitrability, or merits.

The employer asserts that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rev'g 260 N.J. Super. 270 (App. Div. 1992), precludes binding arbitral review of this disciplinary determination. Lodge 122 responds that N.J.S.A. 34:13A-5.3 authorizes binding arbitration of this disciplinary dispute.

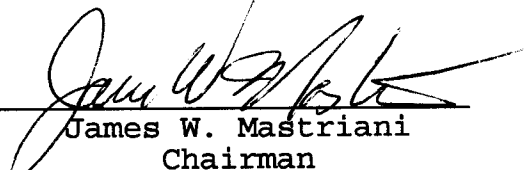
We have discussed State Troopers in a companion case decided today. Union Cty., P.E.R.C. No. 95-43, 21 NJPER ____ (1995). We incorporate that discussion. Under State Troopers, the discipline amendment to N.J.S.A. 34:13A-5.3 does not apply to any police officers. Given the parties' agreement that this grievance

contests the merits of a disciplinary determination, we are compelled to restrain arbitration.^{1/}

ORDER

The request of the Township of Mt. Olive for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: January 24, 1995
Trenton, New Jersey
ISSUED: January 25, 1995

^{1/} This case does not involve a non-disciplinary determination that an employee was required to reimburse an employer for lost or stolen property.