

P.E.R.C. NO. 97-93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-96-109

MONMOUTH COUNTY SHERIFF'S
OFFICERS, PBA LOCAL 314,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Monmouth County Sheriff for a restraint of binding arbitration of a grievance filed by the Monmouth County Sheriff's Officers, PBA Local 314. The grievance contests two and three day suspensions imposed on two sheriff's officers. The Commission finds that a recent amendment to N.J.S.A. 34:13A-5.3 provides specifically for binding arbitration of minor discipline for all public employees except State troopers.

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, Robert J. Hrebek, attorney

For the Respondent, Giordano, Halleran & Ciesla, attorneys
(Edward C. Bertucio, Jr., of counsel)

DECISION AND ORDER

On April 3, 1996, the Monmouth County Sheriff petitioned for a scope of negotiations determination. The Sheriff seeks a restraint of binding arbitration of a grievance filed by the Monmouth County Sheriff's Officers, PBA Local 314. The grievance contests a two-day and a three-day suspension imposed on sheriff's officers Patrick Hamor and Robert Tenpenny.

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

The PBA represents all sheriff's officers employed by the Sheriff. The parties entered into a collective negotiations agreement effective from July 1, 1994 through December 31, 1997. The grievance procedure ends in binding arbitration.

On September 19, 1995, sheriff's officer Robert Tenpenny was given a three-day suspension for spitting on a superior officer's personal vehicle. Sheriff's officer Patrick Hamor was given a two-day suspension for failing to take any action after having witnessed Tenpenny spit on the vehicle.

On October 2, 1995, the PBA filed a grievance asserting that proper procedures were not followed in investigating the alleged misconduct and in imposing the minor discipline. At step two of the grievance procedure, both suspensions were reduced by one day. The PBA processed the grievance to the third step. The Sheriff denied the grievance and 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 arbitrability or merits of the grievance.


P.L. 1996, c. 115, effective January 9, 1997, amended N.J.S.A. 34:13A-5.3 to provide specifically for binding arbitration

of minor discipline for all public employees except State troopers. In City of East Orange, P.E.R.C. No. 97-85, 23 NJPER ____ (1____ 1997), we held that the new amendment applied to a pending dispute. East Orange controls and we therefore decline to restrain binding arbitration.

ORDER

The request of the Monmouth County Sheriff for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz abstained from consideration.

DATED: February 27, 1997
Trenton, New Jersey
ISSUED: February 28, 1997