

P.E.R.C. NO. 96-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HOPATCONG,

Petitioner,

-and-

Docket No. SN-94-74

P.B.A. LOCAL 149,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of P.E.R.C. No. 95-73 filed by the Borough of Hopatcong. In that decision the Commission restrained arbitration of a grievance filed by P.B.A. Local 149 to the extent the grievance sought to contest the merits of a two-day suspension imposed against a police officer or have an arbitrator sit as a hearing officer in a disciplinary proceeding under N.J.S.A. 40A:14-147. However, the Commission declined to restrain arbitration to the extent the grievance claimed violations of the officer's procedural rights to have charges brought within 45 days and to receive a hearing before any discipline was imposed. The Commission rejects the Borough's assertion that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), prohibits arbitration of any procedural claim as well as any substantive claims concerning the discipline of a police officer.

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, David A. Wallace, attorney

For the Respondent, Carl A. Perrone, attorney

DECISION AND ORDER

The Borough of Hopatcong has moved for reconsideration of our decision and order in P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995). There, we restrained arbitration of a grievance filed by P.B.A. Local 149 to the extent the grievance sought to contest the merits of a two-day suspension imposed against a police officer or have an arbitrator sit as a hearing officer in a disciplinary proceeding under N.J.S.A. 40A:14-147. However, we declined to restrain arbitration to the extent the grievance claimed violations of the officer's procedural rights to have charges brought within 45 days and to receive a hearing before any discipline was imposed.

The Borough asserts that State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), prohibits arbitration of any procedural

claims as well as any substantive claims concerning the discipline of a police officer.^{1/} We disagree. Even where a public employer has a managerial prerogative to make a certain personnel decision, pre-decision procedures for insuring that the decision is fairly made are generally mandatorily negotiable. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993); see also Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (126049 1995) (declining to restrain arbitration of same procedural claims as in this case). It would be anomalous to hold that pre-decision procedures are non-negotiable in the instance of disciplinary determinations, but in no other instance. Nothing in State Troopers suggests that employers can never agree to fair pre-discipline procedures for initiating and hearing disciplinary charges or that disputes over procedures incorporated into the parties' contract by reference cannot be arbitrated. See State v. State Supervisory Ass'n, 78 N.J. 54, 80 (1978).^{2/} We therefore deny reconsideration.

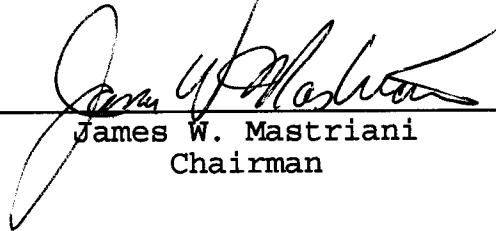
^{1/} The Borough has requested oral argument. We deny that request.

^{2/} State Troopers held that disciplinary determinations against troopers could not be reviewed in binding arbitration. The majority representative had sought arbitration of its claim that past practice precluded any greater penalty than a

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: July 28, 1995
Trenton, New Jersey
ISSUED: July 28, 1995

2/ Footnote Continued From Previous Page

written reprimand for the offenses alleged and thus precluded the summary disciplinary hearing necessary to impose such penalties. Id. at 395, 399. The case thus involved a substantive issue -- the reasonableness of disciplinary penalties. Jersey City v. Jersey City Police Officers Ass'n, 179 N.J. Super. 137 (App. Div. 1981), certif. den. 89 N.J. 433 (1982), likewise focused on the issue of post-discipline review of the reasonableness of a penalty, not pre-discipline procedures ensuring that charges would be timely brought and heard.