[J-234-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA STATE POLICE,	:	No. 28 Middle District Appeal Docket 1998
	:	
Appellant	:	Appeal from the order of the
	:	Commonwealth Court entered July 24,
	:	1997 at No. 147 C.D. 1997, affirming a
v.	:	disciplinary grievance arbitration award.
	:	
	:	698 A.2d 688 (Pa. Commw. 1997)
PENNSYLVANIA STATE TROOPERS	:	
ASSOCIATION (TROOPER RODNEY	:	ARGUED: November 17, 1998
SMITH),	:	
	:	
Appellee	:	
	:	
PENNSYLVANIA STATE POLICE	:	No. 29 Middle District Appeal Docket 1998
	:	
Appellant	:	Appeal from the order of the
	:	Commonwealth Court entered July 24,
v.	:	1997 at No. 3028 C.D. 1996, affirming a
	:	disciplinary grievance arbitration award.
PENNSYLVANIA STATE TROOPERS	:	
ASSOCIATION (Trooper Robert K.	:	698 A.2d 686 (Pa. Commw. 1997)
Johnson)	:	
	:	ARGUED: November 17, 1998
	:	
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO **DECIDED: November 30, 1999**

I concur in the majority opinion because I am constrained by the doctrine of stare decisis to follow the holding in Pennsylvania State Police v. Pennsylvania State Troopers' Assn. (Betancourt), 656 A.2d 83 (Pa. 1995) which limits the scope of

appellate review to the four narrow considerations defined therein. See id. at 85. However, I believe that the certiorari review as defined in Betancourt is too narrow. While I appreciate the majority's reasoning in applying Betancourt, I believe the Betancourt Court canonized judicial restraint in Act 111 arbitration matters to an unacceptable degree. I would, in light of the matters now before us, add a fifth area to the Betancourt scope of review: whether the arbitration decision is repugnant to public policy or shocks the conscience of the court. The appeal of Trooper Smith is just such a case.

Trooper Smith clearly abrogated his duties as a law enforcement officer when he jammed his loaded weapon into his ex-girlfriend's mouth, threatening to kill her. He not only used his police-issued weapon to threaten an innocent private citizen, he did so in a manner and under circumstances which would not be tolerated of a law enforcement officer even in the line of duty. He was dismissed from his law enforcement job, but was subsequently reinstated by the arbitrator. The arbitrator found that the action of the trooper was less egregious than crimes committed by other troopers who were, through the same arbitration process, not dismissed.

It is hard to imagine what offenses on the part of a state trooper might be more egregious than forcing a loaded pistol into another's mouth and still result in that trooper's being retained. It seems to me that if such is the case, the arbitration process veered off course at some point and allowed completely unacceptable police conduct to be arranged in a hierarchy of egregiousness, raising the bar for dismissal to an unacceptable height. This is precisely the kind of arbitration decision which not only

undermines law enforcement's duty to the public but which shocks the conscience of the court.

I am mindful of the underlying policy concerns of the Betancourt decision. Nevertheless, I fail to discern how this additional inquiry would hamper the legislature's goal of "swift resolution of disputes." I disagree with the majority in that I don't find the safeguard of allowing appellate review in clear cases of public policy violations such as this to be a "nebulous concept" incapable of definition or enforcement. Furthermore, I am at a loss to see how this inquiry would "destabilize" the workforce to a greater degree than allowing troopers proven to be ill-suited to their profession to remain in positions of public trust.