

P.E.R.C. NO. 2020-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OLD BRIDGE,

Petitioner,

-and-

Docket No. SN-2019-042

UNITED SERVICE WORKERS UNION,
IUJAT, LOCAL 255,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township's request for a restraint of binding arbitration of Local 255's grievance contesting the Township's issuance of memoranda informing certain employees of their allegedly excessive/abusive sick leave usage patterns and requiring them to provide a doctor's note for future sick days for the remainder of the year. Finding that a public employer has a managerial prerogative to verify that sick leave is not being abused, which includes the prerogative to require employees suspected of abusing sick leave to submit a doctor's note for future use of sick leave, and that the memoranda was non-disciplinary counseling intended to notify employees of their sick leave usage and inform them of the sick leave verification policy that would be applied, the Commission restrains arbitration.

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.

P.E.R.C. NO. 2020-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

AMALGAMATED TRANSIT UNION
DIVISION NO. 540,

Respondent,

-and-

Docket No. CI-2016-012

DONALD BAKER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint in D.U.P. No. 2019-4, 45 NJPER 391 (¶104 2019), which found: (1) the charge is barred by the 6-month statute of limitations; and (2) the charging party, Baker, has not been a public employee since 2006, thus he lacks standing to pursue his claim that his former majority representative and former employer violated the Act, respectively, by refusing to allow Baker to gain back his union membership after his employment had ceased and refusing to assist him in obtaining his correct disability and regular pension benefits, and by breaching his contractual rights. The Commission finds that on appeal Baker is not entitled to relief because he failed to state a factual or legal basis for not sustaining the Director's decision, and otherwise made new, unsupported allegations without explaining why they could not have been previously presented.

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P.E.R.C. NO. 2020-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-027

ELIZABETH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of a grievance filed by the Association. The grievance contests the withholding of a teacher's salary increment. The evaluations and memoranda underlying the withholding alleged the teacher had deficiencies in engaging students, communicating content effectively, and managing student behavior. Finding that the reasons for the withholding predominately relate to an evaluation of teaching performance, the Commission restrains arbitration.

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STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-030

ELIZABETH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of a grievance filed by the Association contending that the Board disciplined a teacher without just cause by withholding her salary increment for the 2018-19 school year. The Commission finds that the withholding was predominately based on an evaluation of teaching performance, as evidenced by numerous evaluative documents relied upon by the Board, and by the Association's failure to allege any arbitrable violations of work rules or misconduct by the grievant as the basis for the withholding. The Commission finds further indication that the withholding was based on an evaluation of teaching performance in the Association's contention that a lack of access to Board documents prevented the grievant from improving her teaching performance. The Commission further finds that any alleged inequities in the Board's evaluative process and decision making may be raised before the Commissioner of Education.

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STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-031

ELIZABETH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Board's request for a restraint of binding arbitration of a grievance filed by the Association contending that the Board withheld a teacher's salary increment for the 2018-19 school year without just cause. The Commission finds that, of the three documents upon which the withholding is based, only one, addressing an alleged failure in 2015-16 to input grades in a timely manner, relates predominately to teaching performance. On this sparse record, the Commission lacks confidence that a memorandum addressing allegedly inappropriate speech or opinions voiced by the grievant in 2015-16 predominately concerned an evaluation of her teaching performance. As to a document addressing a single in-class incident in 2017-18 of the grievant allegedly grabbing a student by the ear, the Commission finds no educational expertise is needed to determine whether such indisputably improper conduct occurred. The Commission finds that, on balance, binding arbitration is the appropriate forum for this dispute.

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P.E.R.C. NO. 2020-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2019-034

OCEAN COUNTY COLLEGE FACULTY
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the College's motion for reconsideration of P.E.R.C. No. 2019, 45 NJPER 417 (¶112 2019), which found mandatorily negotiable two contract clauses concerning preservation of unit work. Finding the College has not demonstrated extraordinary circumstances or exceptional importance warranting reconsideration, the Commission rejects arguments made by the College in support of its motion that were raised and rejected in the prior decision. The Commission further rejects the College's unsupported argument, improperly raised for the first time in its motion, that the Association waived negotiation over unit-work preservation because instructional work has historically been shared with non-unit staff. The Commission also finds the College puts misplaced reliance, in support of this argument, on an interim-relief decision in a still-pending unfair practice charge involving the same parties.

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P.E.R.C. NO. 2020-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-048

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the Board's request for a restraint of binding arbitration of two grievances filed by the Association. One grievance challenges a letter of reprimand issued to a teacher concerning alleged insubordination and failure to comply with administrative directives and school policies. The other grievance challenges the imposition of a doctor's note requirement for the teacher's future sick days that requires the doctor's note within three days of returning to work. Finding that the letter is predominately a disciplinary reprimand rather than a performance evaluation, the Commission declines to restrain arbitration of the letter of reprimand grievance. Finding that the Board has a managerial right to verify illness, but that a three day period to submit a doctor's note is a negotiable procedural issue, the Commission restrains arbitration of the challenge to requiring a doctor's note for future absences, but declines to restrain arbitration of the three day period for submission.

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STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-049

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the Board's request for a restraint of arbitration of a grievance filed by the Association. The grievance challenges the imposition of a doctor's note requirement for a teacher's future sick days that designates the principal as the superintendent's proxy to request and receive doctor's notes, and requires that doctor's notes be submitted within three days of returning to work. Finding that the Board has a managerial right to verify illness, including to determine who will administer a doctor's note policy, the Commission restrains arbitration of the challenge to the doctor's note requirement and to the assignment of the principal as proxy to request and receive doctor's notes. Finding that the imposition of a three day period to submit a doctor's note is a negotiable procedural issue, the Commission declines to restrain arbitration on that aspect of the grievance.

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P.E.R.C. NO. 2020-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LONG BRANCH,

Petitioner,

-and-

Docket No. SN-2019-053

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 152,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City, a Civil Service jurisdiction, for a restraint of binding arbitration of a grievance filed by Local 152 contending that the City violated the parties' collective negotiations agreement (CNA) when it terminated without just cause the grievant, a provisional appointee whose appeal of the termination to the Civil Service Commission was denied based upon his lack of permanent status. Citing Commission precedent holding that employers in Civil Service communities may agree to arbitrate disciplinary terminations of provisional employees, but any arbitral remedy cannot conflict with Civil Service laws, the Commission finds the City's contractual arguments (that the CNA does not grant the grievant access to its grievance procedure and also specifies that the termination is subject to Civil Service Commission's jurisdiction) raise issues pertaining to substantive and procedural arbitrability that are beyond the Commission's purview in a scope of negotiability determination.

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P.E.R.C. NO. 2020-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL TOWNSHIP,

Respondent,

-and-

Docket No. IA-2019-016

HOPEWELL PBA LOCAL 342,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a conventional interest arbitration award issued on June 5, 2019, covering the period January 1, 2019 through December 31, 2021, on the PBA's appeal from aspects of the award addressing salary only, based upon the interest arbitrator's comprehensive review of the evidence presented and application of the statutory criteria, which the Commission found was satisfactorily explained in her well-reasoned award. The Commission rejects the PBA's arguments that the interest arbitrator improperly relied on a 2% hard cap on base salary increases and that the arbitrator erred by failing to account for savings realized by the Township stemming from employees who had, in 2018, retired or been promoted out of the unit. The Commission finds the interest arbitrator did not limit salary increases to 2% per year, and that she properly took into account the Township's reduced costs stemming from retirements and promotions out of the unit when she considered the statutory factors of impact on the taxpayers and the Township's ability to pay.

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P.E.R.C. NO. 2020-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Respondent,

-and-

Docket No. IA-2019-017

PBA LOCAL 366,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the Township and PBA. The PBA appealed arguing that the award failed to apply and give due weight to the statutory factors, was not supported by substantial credible evidence, and violated N.J.S.A. 2A:24-8. Particularly, the PBA contested the award's determinations on salary, health benefits contributions, sick leave, and uniform allowance as not being supported by the external comparables submitted by the PBA. The Commission finds that the arbitrator explained the weight he afforded to the statutory factors, demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for each element of the award in light of the evidence and statutory factors.

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