

P.E.R.C. NO. 2021-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-2021-022

IAFF LOCAL 1064,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, of counsel and on the brief; H. Thomas Clarke, on the brief)

For the Respondent, Cohen, Leder, Montalbano & Connaughton, LLC, attorneys (Brady M. Connaughton, of counsel and on the brief)

SYNOPSIS

The Public Employment Relations Commission denies the City of Jersey City's (City's) request for a restraint of binding arbitration of a grievance filed by IAFF Local 1064 (Local 1064). The grievance alleges that the City violated the parties' collective negotiations agreement (CNA) by using Acting Captains, as opposed to Captains on overtime, to fill Captain vacancies during the COVID-19 pandemic in order to limit cross-contamination between tours. The Commission finds that the City's goal of maintaining employee health and providing essential services does not preclude negotiations prior to deviating from the CNA. The Commission further finds that the record does not show any link between the positive COVID-19 cases in the District and cross-contamination between tours. The Commission concludes that Local 1064's grievance is mandatorily negotiable and legally arbitrable, and that the City has not demonstrated that negotiations or arbitration over its unilateral decision to deviate from the CNA would substantially limit its governmental policy-making powers.

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. 2021-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief;
Mohammad Barry, on the brief)

For the Respondent, Crivelli & Barbati, LLC, attorneys
(Frank M. Crivelli, of counsel and on the brief; Donald
C. Barbati, on the brief)

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration remand award after the interest arbitrator on remand provided a cost-out of his award and clarified the net annual economic changes and annual costs of all base salary items. The MCPO appealed from the remand award, asserting that the award does not comply with the County Entity Budget Cap (CEBC), that the record did not support the award of an 8-hour workday, and that the arbitrator failed to give due weight to certain statutory 16(g) factors such as the interests and welfare of the public. The Commission finds that the arbitrator considered the MCPO's and PBA's arguments regarding the impact of the CEBC and supported his determination that the award does not present a CEBC issue by citing to the record including witness testimony, the county's current fiscal condition and revenue capacity, and the fact that the county had previously adjusted to comply with the CEBC despite overtime costs exceeding the budgeted amount. The Commission also finds that the arbitrator supported the award of the 8-hour workday by noting internal and external comparability, costing out the projected salary increases while accounting for reduced costs from overtime savings, and recognizing that despite the Prosecutor's testimony

against the 8-hour workday, the Prosecutor previously but recently advocated for the 8-hour workday due to overtime savings and scheduling flexibility. The Commission finds that the arbitrator's decision to award some elements of each party's proposal, such as the 3-year term proposed by the MCPO, and awarding a delay in the implementation of the PBA's proposed 8-hour workday, was supported by his consideration of the parties' interests and the public interest. Finally, the Commission finds that the arbitrator gave due weight to the 16(g) statutory factors and that he did not improperly offset the PBA's Chapter 78 health insurance premium contributions with salary increases.

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. 2021-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

Appearances:

For the Appellant, McCusker, Anselmi, Rosen &
Caravelli, P.C., attorneys (John L. Shahdanian II,
Esq., on the brief)

For the Respondent, Limsky Mitolo, attorneys (Merrick
H. Limsky, on the brief)

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to clarify an issue concerning retiree healthcare contribution levels. The Borough of Old Tappan's (Borough) appeal of the award asserts that it failed to address retirees' healthcare contributions as presented in the Borough's final offers, specifically that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78 (Chapter 78). The PBA responds that the award does not require clarification because it clearly did not change the prior contract's healthcare benefits for current PBA members, which provided for fully paid healthcare benefits for retirees. The Commission finds that the award requires clarification because it addressed one aspect of the Borough's final offer - whether new hires would be limited to single health insurance coverage - but it did not address the other aspect - contribution levels for retiree healthcare benefits. The Commission retains jurisdiction and orders the parties to file supplementary briefs with the Commission following receipt of the arbitrator's clarification of the award.

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. 2021-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RED BANK,

Petitioner,

-and-

Docket No. SN-2021-010

CWA LOCAL 1075,

Respondent.

Appearances:

For the Petitioner, Weiner Law Group, LLP, attorneys
(Joshua I. Savitz, of counsel and on the brief)

For the Respondent, Law Offices of Barry D. Isanuk,
Esq., attorneys (Barry D. Isanuk, of counsel and on the
brief)

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, the request of the Borough of Red Bank for a restraint of binding arbitration of a grievance filed by CWA Local 1075, contesting the Borough's decision, pursuant to a reduction in force (RIF), to abolish the positions of two part-time employees of the Borough's Department of Public Works. The Commission finds the Borough's decision to abolish the positions is not legally arbitrable, and restrains arbitration of that issue. The Commission permits arbitration of alleged procedural violations associated with the RIF, which are mandatorily negotiable, and severable impact issues first raised in CWA's brief, finding the question of whether those claims were properly presented during the grievance process is a matter of contractual arbitrability rather than a precondition to legal arbitrability. The Commission restrains arbitration of CWA's claim that the Borough was discriminatory in abolishing the positions, finding arbitration of that claim would interfere with the Borough's managerial prerogative to abolish the positions, and the grievants may make that claim to the State Division on Civil Rights. However, the Commission finds that the discrimination claim does not implicate a managerial prerogative, and may be arbitrated, to the extent it is made with regard to the notice and impact issues.

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. 2021-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NEPTUNE,

Petitioner,

-and-

Docket No. SN-2021-024

AFSCME COUNCIL 63, LOCAL 2792,

Respondent.

Appearances:

For the Petitioner, Plosia Cohen, LLC, attorneys
(Jonathan F. Cohen, of counsel and on the brief)

For the Respondent, AFSCME, Council 63, Local 2792
(Tracy Smith, Staff Representative)

SYNOPSIS

The Public Employment Relations Commission grants the Township's request for a restraint of binding arbitration of Local 2792's grievance contesting the Township's denial of the grievant's request to receive management training for the Sanitation division. Finding that the Township has a non-negotiable managerial prerogative to decide which employees will be trained and how they will be trained, the Commission holds that the Township's decision to make its Sanitation management training available only to Sanitation employees and not to Roads employees like the grievant, is not mandatorily negotiable or legally arbitrable.

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. 2021-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAPE MAY,

Public Employer,

-and-

Docket Nos. RO-2021-035
RO-2021-037
CO-2021-148

CWA LOCAL 1036,

Petitioner,

-and-

GOVERNMENT WORKERS UNION,

Intervenor.

Appearances:

For the Public Employer, Brown & Connery, LLC,
attorneys (Michael J. Watson, of counsel)

For the Petitioner, Beckett and Paris, LLC, attorneys
(David B. Beckett, of counsel)

For the Intervenor (David L. Tucker, President GWU)

SYNOPSIS

The Public Employment Relations Commission grants the request of Communication Workers of America Local 1036 (CWA) for review of D.R. No. 2021-2, __ NJPER __ (¶__ 2021), wherein the Commission's Director of Representation granted the request of the incumbent and intervening union, Government Workers Union (GWU), to block the processing of CWA's petitions seeking to represent units of blue and white collar employees of the City of Cape May. The Director concluded that a free and fair representation election could not be conducted during the pendency of unfair practice proceedings initiated by GWU, based upon the timing of a purported admission by the City's then-City Manager that he dealt directly with GWU unit members; this admission occurred around the same time CWA was sought out by City blue and white collar employees, and when authorization

cards were being distributed by CWA. The Commission finds, absent competent evidence in the record of specific dates that the alleged direct dealing incidents actually occurred and unit members' actual awareness of them, the timing of the purported admission of direct dealing, standing alone, does not conclusively establish the requisite nexus between the alleged direct dealing and the conduct of a free and fair election, to the degree necessary to support a blocking charge. The Commission reverses the block and orders a resumption of the processing of CWA's representation petitions.

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.