

P.E.R.C. NO. 2021-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2021-085

NEWTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Newark Board of Education for a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators (CASA), alleging the Board violated the parties' collective negotiations agreement (CNA) when it designated someone other than the superintendent or assistant superintendent to evaluate the grievant, a school principal, as required by a CNA provision to which the Board previously agreed and enforced; and seeking removal from the grievant's file of evaluative documents prepared by that individual. The Commission finds the Board has a non-negotiable, managerial prerogative to determine who will prepare evaluations of teaching staff members; and CASA concedes the challenged documents are purely evaluative, making no argument that they are disciplinary and therefore arbitrable. The Commission further finds that an enforceable past practice cannot arise from the Board's prior history of agreement to or compliance with such a contract term.

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. 2021-48

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2021-026

CITY ASSOCIATION OF SUPERVISORS  
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Newark Board of Education for a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators (CASA), alleging the Board violated the parties' collective negotiations agreement (CNA) when it designated someone other than the superintendent or assistant superintendent to evaluate the grievant, a school principal, as required by a CNA provision to which the Board previously agreed and enforced; and seeking removal from the grievant's file of evaluative documents prepared by that individual. The Commission finds the Board has a non-negotiable, managerial prerogative to determine who will prepare evaluations of teaching staff members; and CASA concedes the challenged documents are purely evaluative, making no argument that they are disciplinary and therefore arbitrable. The Commission further finds that an enforceable past practice cannot arise from the Board's prior history of agreement to or compliance with such a contract term.

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STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CI-2021-001

PBA LOCAL 378

Respondent,

-and-

PAUL C. LIOBE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint on an unfair practice charge filed by Paul C. Liobe against the Sheriff's Office and the PBA. The charge against the Sheriff's Office alleges that it violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) by not properly compensating him for work details he performed for the Sussex County Municipal Utilities Authority (SCMUA). The charge against the PBA alleges that it violated the Act by breaching its duty of fair representation when it withdrew his SCMUA work detail grievance from arbitration. The Commission finds that the PBA's decision to withdraw Liobe's grievance from arbitration did not breach its duty of fair representation because the new PBA President evaluated the grievance and explained his rationale for not pursuing arbitration based on the best interests of the union and on his reasonable interpretation that the contract did not support the grievance. The Commission finds that, because Liobe has not asserted a viable breach of duty of fair representation claim against the PBA, he lacks standing to assert a claim against the Sheriff's Office for a failure to negotiate in good faith.

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STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Respondent,

-and-

Docket No. CO-2019-270

EAST ORANGE SUPERIOR OFFICERS'  
ASSOCIATION, FRATERNAL ORDER OF  
POLICE, LODGE NO. 188 a/w FOP  
NEW JERSEY LABOR COUNCIL,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms, on different grounds, a Hearing Examiner's decision, H.E. NO. 2021-5, 47 NJPER 355 (¶83 2021), granting the FOP's motion for summary judgment on its unfair practice charge (UPC). The UPC alleges that the City of East Orange (City) unilaterally implemented a policy, which required employees to use paid leave concurrently with leave under the Family Medical Leave Act, 29 U.S.C. §2601 et seq. (FMLA), and/or the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq. (NJFLA), and that such paid leave must be taken in a specific sequence. The Hearing Examiner found that the City's implementation of the Policy was mandatorily negotiable, and that the FMLA and NJFLA mandate a minimum level of family leave benefits that does not bar the employer from granting greater benefits through negotiations. The City's exceptions to the Hearing Examiner's decision argue, among other things, that its unilateral implementation of the policy was necessary to counter sick leave abuse, and that the Hearing Examiner's decision failed to properly consider such evidence of sick leave abuse. The Commission agrees with the Hearing Examiner's decision that the City's unilateral implementation of the policy violated the Act, but arrives at the conclusion after fully considering the City's allegations of leave abuse and applying the Local 195 test. The Commission finds that the City had a managerial prerogative to unilaterally implement measures to verify leave at any time, and/or could have negotiated such measures with the FOP. However, after balancing the parties' interests under the Local 195 test, the Commission finds the City's unilateral implementation of the policy was an invasive measure to address the alleged leave abuse, and foreclosed the City's use of other less invasive measures that would not have infringed upon mandatorily negotiable terms and conditions of employment. The Commission further finds that the policy made changes to

negotiable terms and conditions of employment during pending contract negotiations, and such unilateral changes are destabilizing to the employment relationship, create a chilling effect on negotiations for a successor contract, and constitute a refusal to negotiate.

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