

P.E.R.C. NO. 2021-51

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ANDOVER REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2021-033

ANDOVER REGIONAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Andover Regional Board of Education's request for a determination that employee contributions for dental benefits coverage are subject to negotiations under both Chapter 78 and Chapter 44, for employees of school districts enrolled in the State-operated School Employees' Health Benefits Program (SEHBP). The dispute arose following an impasse in negotiations between the Board and the Andover Regional Education Association for a collective negotiations agreement covering its members, wherein the Association contended that by excluding dental benefits from the definition of the "cost of coverage" for medical and prescription coverage, under both Chapter 78 and Chapter 44, the Legislature meant to preempt negotiations over separate contribution rates for dental benefits provided under a private plan. The Commission finds that neither Chapter 78 nor Chapter 44 expressly sets particular terms and conditions of employment that "speak in the imperative and leave nothing to the discretion of the public employer," such that "negotiation over [that subject]. . . is not permissible."

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. 2021-52

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-2021-030

UNION CITY EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Union City for a restraint of binding arbitration of a grievance filed by the Union City Employees Association, asserting that the City violated the parties' collective negotiations agreement (CNA) when it suspended the grievant, an Emergency Medical Technician employed by the City, indefinitely without pay pending criminal charges. The Commission finds that as the City is a civil service jurisdiction, the grievant's major discipline of an indefinite suspension without pay pending criminal charges is subject to an alternative statutory appeal procedure, of which the grievant, through her union, availed herself by means of an appeal of the City's final notice of disciplinary action to the Civil Service Commission. The Commission further finds that, to the extent the grievance challenges alleged procedural violations in connection with the unpaid suspension, such claims are only arbitrable when they are not part of challenges to non-arbitrable major discipline.

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STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Petitioner,

-and-

Docket No. SN-2021-032

PBA LOCAL 77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants Hammonton's request for a restraint of binding arbitration of PBA Local 77's grievance alleging that Hammonton violated the parties' CNA when it failed to pay the Grievant his accumulated sick leave upon his voluntary resignation and transfer to another municipal police department. Hammonton argues that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance because it only allows for an accumulated sick leave payment upon an employee's retirement as opposed to a voluntary transfer. The PBA argues that the statute does not preempt its grievance because it does not preclude the Grievant from being paid his accumulated sick leave upon his retirement in the future, and sick leave is generally mandatorily negotiable. The Commission finds that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance seeking immediate enforcement of an accumulated sick leave payout clause. The Commission concludes that the Grievant was hired after the effective date of the statute, and thus, is statutorily ineligible to receive a sick leave payout until his retirement.

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P.E.R.C. NO. 2021-54

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a remanded interest arbitration award between the Passaic County Sheriff's Office and PBA Local 197. Rejecting the PBA's assertion that the arbitrator committed plain error by ordering the parties to submit additional cost-outs on remand, and utilizing those cost-outs in his remand award, the Commission finds that its remand Order empowered the arbitrator to do so; and the facts he adduced therefrom were verifiable and comported with the relevant scattergram evidence in the record. The PBA did not dispute that evidence or identify any particular details in the County's cost-out on remand that could not also be so verified, or that could only be tested through the cross-examination of witnesses or through the presentation of other evidence not already in the record. The Commission further finds that the arbitrator properly declined to consider an award covering the same employer but a different bargaining unit that was issued some four months after the record here closed, finding its consideration was outside the limited scope of the remand Order. But even if it had been considered, the Commission does not find that the two awards are unreasonably inconsistent with one another, to a degree that would require reversal or modification of the remand award.

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P.E.R.C. NO. 2021-55

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WAYNE TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. TO-2020-004

WAYNE CUSTODIAL & MAINTENANCE ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission affirms, with certain modifications, a Hearing Examiner's decision in a contested transfer determination filed by the Wayne Custodial and Maintenance Association. The Hearing Examiner's decision recommended that Wayne Township Board of Education violated N.J.S.A. 34:13A-25 by transferring a groundskeeper to head custodian for predominately disciplinary reasons, and that the employee be returned to his former position of groundskeeper. The Board filed exceptions to the Hearing Examiner's decision, arguing that the Hearing Examiner's credibility determinations were arbitrary, capricious, and unreasonable. The Association argues that the Hearing Examiner's decision was based on a thorough review of the preponderance of credible evidence. The Commission finds that that the Hearing Examiner's credibility determinations and findings of fact were not arbitrary, capricious, or unreasonable because they were supported by sufficient, competent, and credible evidence in the record.

However, the Commission rejects the Hearing Examiner's finding of fact that the Board's supervisor exercised personal preference in offering overtime opportunities because such a finding was not based on a preponderance of credible evidence, and the Hearing Examiner drawing a negative inference from the Board not producing a certain witness's testimony because it was not established how the absent testimony would have been superior to that testimony which was already in evidence.

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P.E.R.C. NO. 2021-56

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-2021-028

UNITED STEEL WORKERS, AFL-CIO-CLC,  
LOCAL 4-406,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the Authority's request for restraint of binding arbitration of the USW's grievance contesting the Authority's job postings for journeyworkers and hiring of journeyworkers who have not completed a DOL registered apprenticeship program, and its alleged failure to adhere to procedural DOL Apprenticeship Standards incorporated into the CNA. Finding that the Authority had a non-negotiable managerial prerogative to determine job qualifications and hire employees to match its staffing needs, the Commission restrains arbitration over the Authority's posting for and hiring of journeyworkers with experience to replace retiring employees. Finding that the USW's allegations regarding violations of the Apprenticeship Standards and federal regulations contained therein are not specifically preempted from arbitration, the Commission declines to restrain arbitration.

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P.E.R.C. NO. 2021-57

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Petitioner,

-and-

Docket No. SN-2021-036

UNION COUNCIL 8,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the County's request for restraint of binding arbitration of Council 8's grievance contesting the County's requirement that employees use paid sick leave time during NJFLA leave. Finding that N.J.A.C. 13:14-1.7 does not preempt arbitration because its language is discretionary and does not speak in the imperative regarding use of paid sick leave during NJFLA and that N.J.S.A. 34:11B-14 provides that the NJFLA's implementing regulations cannot be construed to reduce benefits or preclude negotiations over greater family leave benefits, the Commission declines to restrain arbitration.

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