

P.E.R.C. NO. 2006-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

Docket No. CO-1994-158

-and-

THOMAS FIGUEIRA,

Charging Party-Intervenor.

SYNOPSIS

The Public Employment Relations Commission denies Thomas Figueira's request for special permission to appeal a Hearing Examiner's mid-hearing evidentiary ruling. Figueira seeks review of the Hearing Examiner's ruling granting the motion of Rutgers, The State University which sought to bar the proffered testimony of a professor as being irrelevant. The Commission holds that it will not intrude on a Hearing Examiner's evidentiary rulings mid-hearing absent extraordinary circumstances.

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. 2006-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-2005-128

JERSEY CITY POBA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the City of Jersey City's motion for reconsideration of P.E.R.C. No. 2006-66. In that decision, the Commission denied a motion for summary judgment the City filed and a cross-motion for summary judgment the Jersey City POBA filed. The POBA's underlying unfair practice charge alleges that the City violated the New Jersey Employer-Employee Relations Act when it paid police recruits an hourly rate rather than a rate that correlates with the salary guide in the parties' agreement, allegedly in violation of a settlement agreement. The Commission finds no extraordinary circumstances warranting reconsideration. All of the City's arguments can be addressed after a hearing has been held and competing factual contentions have been answered.

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P.E.R.C. NO. 2006-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. IA-2006-036

NEWARK IDENTIFICATION
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the City of Newark's motion to dismiss a Petition to Initiate Compulsory Interest Arbitration filed by the Newark Identification Officers Association. The City asserts that the Association is not entitled to interest arbitration because the current agreement will not expire until December 31, 2008; because the identification officers are not police officers entitled to interest arbitration under the statute, and because the parties' contract acknowledges that the Association is not entitled to interest arbitration. The Commission finds that in 2004 both parties executed a Memorandum of Agreement effective through December 31, 2008. The Commission concludes that the Memorandum of Agreement covers the economic issues raised in the interest arbitration petition and that agreement cannot be set aside by the petition. With respect to the non-economic issues in the petition, the Commission concludes that the Memorandum specified that the previous contract would be amended to substitute the Association as the majority representative and that all terms of the contract would remain in effect.

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P.E.R.C. NO. 2006-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELLE PARK,

Petitioner,

-and-

Docket No. SN-2006-033

P.B.A. LOCAL NO. 27,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Roselle Park for a restraint of binding arbitration of a petition filed by P.B.A. Local No. 27. The PBA contests a progressive discipline component in the employer's sick leave policy. The Commission concludes that a public employer has a managerial prerogative to verify that sick leave is not abused and to determine the number of absences and situations that trigger a doctor's note requirement. However, the Commission finds that an employer does not have a prerogative to establish a non-negotiable progressive discipline system for violating a sick leave and absenteeism policy. The Commission holds that both the general concept of progressive discipline and the specific steps of a progressive discipline system are negotiable.

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P.E.R.C. NO. 2006-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY SHERIFF/
COUNTY OF ESSEX,

Petitioner,

-and-

Docket No. SN-2006-068

ESSEX COUNTY SHERIFF'S
OFFICERS, P.B.A. LOCAL 183,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Essex County Sheriff's Officers, P.B.A. Local 183 for inclusion in a successor collective negotiations agreement with the County of Essex/Essex County Sheriff. The proposal would provide employer-paid medical coverage to officers who retire because of job-related disabilities. The employer argues that the Police and Firemen's Retirement System statute, specifically N.J.S.A. 43:16A-7, and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq., prohibit granting disabled retirees any benefit beyond a pension, annuity, and workers' compensation payments. The Commission holds that these statutes do not expressly, specifically, or comprehensively eliminate the employer's discretion to grant the requested benefit and thus do not preempt negotiations.

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P.E.R.C. NO. 2006-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-055

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Willingboro Board of Education for a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance contests the withholding of a teacher's increment for the 2005-2006 school year. The Commission concludes that the reasons for this withholding predominately involve teaching performance and review must therefore be before the Commissioner of Education. The Commission holds that although some of the reasons may not involve teaching performance, most of the reasons, such as communicating with parents concerning academic performance, not submitting lesson plans or leaving plans for substitute teachers, and not helping students to learn, relate to teaching performance.

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P.E.R.C. NO. 2006-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-056

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Willingboro Board of Education for a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance contests the withholding of a teacher's increment for the 2005-2006 school year. The Commission concludes that the reasons for this withholding predominately involve teaching performance and review must therefore be before the Commissioner of Education. The Commission holds that although some of the stated reasons may not involve teaching performance, other reasons such as poor lesson plans and instruction, incomplete and improper grading, inadequate knowledge of subject taught, and unsatisfactory performance ratings all relate to teaching performance.

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P.E.R.C. NO. 2006-89

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2006-065

P.B.A. LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by P.B.A. Local 304. The PBA asserts that the employer's continuing enforcement of its excessive absenteeism policy violated the sick leave provisions of the parties' collective negotiations agreement as interpreted in a recent grievance arbitration award. The Commission concludes that while an employer has a prerogative in the abstract to conduct conferences with employees about their sick leave use, arbitration will be permitted when the record indicates that counseling conferences were in fact a form of discipline imposed for a sick leave violation already found. In this case, an arbitrator has already found that counseling was being used as an automatic form of discipline even if negotiated sick leave benefits were being properly used. The Commission holds that this grievance's contention that the arbitration award is being ignored and employees are still being improperly disciplined may be reviewed through arbitration.

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P.E.R.C. NO. 2006-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2006-066

NEW JERSEY TRANSIT POLICE
SUPERIORS, FOP LODGE #37,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by New Jersey Transit Police Superiors, FOP Lodge #37. The FOP asserts that the employer's enforcement of its excessive absenteeism policy and specifically its issuance of a counseling notice to a sergeant violated the sick leave and anti-discrimination provisions of the parties' collective negotiations agreement. The Commission concludes that while a public employer has a prerogative to verify that sick leave is not being abused and the right to monitor sick leave use and to determine the number of absences that warrant further scrutiny or trigger a doctor's note requirement, determinations to impose discipline for sick leave abuse or excessive absenteeism may be arbitrated, absent an alternate statutory appeal procedure. The Commission concludes that the allegation that NJ Transit unjustly disciplined the sergeant and violated contractual sick leave provisions may be reviewed through arbitration. The Commission further finds that the discrimination and retaliation allegations in the grievance may also be arbitrated.

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P.E.R.C. NO. 2006-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2006-067

NEW JERSEY TRANSIT POLICE
SUPERIORS, FOP LODGE #37,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by New Jersey Transit Police Superiors, FOP Lodge #37. The FOP asserts that the employer's enforcement of its excessive absenteeism policy and specifically its issuance of a counseling notice to a sergeant violated the sick leave and anti-discrimination provisions of the parties' collective negotiations agreement. The Commission concludes that while a public employer has a prerogative to verify that sick leave is not being abused and the right to monitor sick leave use and to determine the number of absences that warrant further scrutiny or trigger a doctor's note requirement, determinations to impose discipline for sick leave abuse or excessive absenteeism may be arbitrated, absent an alternate statutory appeal procedure. An employer cannot unilaterally determine that an employee abused sick leave without affording the employee an opportunity to contest that determination. The Commission concludes that the allegation that NJ Transit unjustly disciplined the sergeant and violated the contractual sick leave and anti-discrimination provisions may be reviewed through arbitration.

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