

P.E.R.C. NO. 2003-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY STATE-OPERATED
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2002-74

NON-CERTIFIED ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Jersey City State-Operated School District for a restraint of binding arbitration of a grievance filed by the Non-Certified Administrators and Supervisors Association. The grievance asserts that a supervisor was injured on the job, sought to return to work, and was unjustly denied permission to return to work. The grievance seeks reimbursement for sick, vacation and credit days taken after he was denied permission to return to work. The Commission concludes that this dispute does not involve a claim for reimbursement for a work-related injury and that a factual dispute over the physical condition of an employee seeking to return to work is 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. 2003-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LINCOLN PARK,

Petitioner,

-and-

Docket No. SN-2002-75

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 74, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Lincoln Park for a restraint of binding arbitration of a grievance filed by the Service Employees International Union, Local 74, AFL-CIO. The grievance asserts that the Borough violated the parties' collective negotiations agreement by not filling the position of Supervisor, Recreation Maintenance and by not paying an employee a higher rate of compensation for the duties he allegedly performed in that capacity. The Commission restrains arbitration over the claim that the position must be filled since such claims are non-negotiable. The Commission also restrains arbitration over the claim that the position must be reclassified since the Department of Personnel has rejected that claim and an arbitrator cannot second-guess DOP's rulings in classification appeals. The Commission also restrains arbitration over the compensation claim because it is not separable from the claim that the employee's title must be reclassified and would also require an arbitrator to second-guess DOP's ruling.

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P.E.R.C. NO. 2003-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Petitioner,

-and-

Docket No. SN-2002-56

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 23A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of New Brunswick for a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Local No. 23A. The grievance alleges that the City violated a contract provision on job assignments. The Commission concludes that public employers and unions may agree that seniority can be a factor in shift assignments where all qualifications are equal and managerial prerogatives are not otherwise compromised. However, public employers have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. The Commission holds that, under all the circumstances, enforcing an alleged agreement to base supervisory transfers on seniority rather than experience would substantially limit the City's policymaking power.

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P.E.R.C. NO. 2003-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SPRING LAKE,

Petitioner,

-and-

Docket No. SN-2002-66

SPRING LAKE POLICE BENEVOLENT
ASSOCIATION, LOCAL NO. 50,
and CAPTAIN MARK EVANGELISTA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Spring Lake for a restraint of binding arbitration of a grievance filed by Captain Mark Evangelista. The demand for arbitration was filed by the Spring Lake Police Benevolent Association, Local No. 50. The grievance contests the amount of the captain's overtime compensation. The Borough argues that arbitration should be restrained because the captain is not included in the PBA's negotiations unit and not covered by the PBA's contractual grievance procedures. The Commission concludes that overtime work and the form of payment for overtime are mandatorily negotiable issues. The Commission also concludes, however, that its scope of negotiations jurisdiction does not extend to deciding whether the captain has a right to arbitrate his overtime grievance and that issue must now be addressed to the arbitrator or a court.

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P.E.R.C. NO. 2003-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION LOCAL NO. 23,

Appellant,

-and-

Docket No. IA-2000-56

CITY OF EAST ORANGE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and remands in part an interest arbitration award issued to resolve negotiations between the City of East Orange and Firemen's Mutual Benevolent Association Local No. 23. The FMBA appealed the award alleging that the awarded salary increases are too low and that the arbitrator did not give due weight to several of the statutory factors. The Commission remands the award to the arbitrator for the limited purpose of allowing the arbitrator to address the issue of whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000. The Commission concludes that except for this limited issue, the arbitrator reached a reasonable determination of the issues and the award is supported by substantial credible evidence. While a full remand is unnecessary, the award is stayed pending issuance of a supplemental opinion and award within 30 days from the date of this decision.

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P.E.R.C. NO. 2003-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF SOMERS POINT,

Respondent,

-and-

Docket No. CO-H-2001-227

MAINLAND PBA #77 and
APRIL VAN DALEY,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Somers Point violated the New Jersey Employer-Employee Relations Act by reprimanding and suspending an officer represented by Mainland PBA #77 in retaliation for her filing a grievance seeking a shift change to accommodate her National Guard training. The Commission concludes that disciplining Van Daley tended to interfere with her protected right to "grieve" the City's application of certain statutes and regulations to her situation. It further finds that there is no legitimate business justification for reprimanding and suspending Van Daley for her memorandum about leave time. The Commission orders the City to rescind all discipline, expunge the disciplinary actions from her record, and make Van Daley whole for losses of salary and benefits.

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P.E.R.C. NO. 2003-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY,

Respondent,

-and-

Docket No. CO-H-2001-10

PROBATION ASSOCIATION OF NEW JERSEY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the State of New Jersey Judiciary. The Complaint was based on an unfair practice charge filed by the Probation Association of New Jersey. The charge alleges that the Judiciary violated the New Jersey Employer-Employee Relations Act by reassigning nine senior probation officers in the Mercer vicinage in retaliation for the protected activity of current or former PANJ officials. The Commission concludes that PANJ did not meet its burden of proof on its allegations concerning the reassignments and therefore dismisses the Complaint.

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P.E.R.C. NO. 2003-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-H-2001-298

JNESO, DISTRICT COUNCIL 1, IUOE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the County of Essex. The Complaint was based on an unfair practice charge filed by JNESO, District Council 1, IUOE. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act by bypassing the majority representative and dealing directly with a unit employee and his attorney. The Commission answers only the question of whether the Civil Service Act, when read in light of the Employer-Employee Relations Act, grants the choice of attorney or union representative to the employee or the union. N.J.S.A. 34:13A-5.3 provides that its provisions shall not be construed to deny to any individual employee his rights under Civil Service laws or regulations. Those laws and regulations specifically provide for an employee's choice of attorney or union representative at a statutorily-mandated pre-disciplinary hearing. The Commission does not construe the Employer-Employee Relations Act to transfer the right to make that choice to the union. Neither the text nor the legislative history of the Civil Service statute or regulations, adopted after passage of the Employer-Employee Relations Act, suggests such a legislative intent. Accordingly, the Commission concludes that the County did not violate the Act when it dealt directly with the employee's private attorney.

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P.E.R.C. NO. 2003-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-8

BOUND BROOK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a provision in an expired collective negotiations agreement between the Bound Brook Board of Education and the Bound Brook Education Association. The Commission finds that a provision concerning guaranteed overtime for custodians is not mandatorily negotiable to the extent it would require the employer the schedule services when it has determination that service are not needed. The provision is otherwise mandatorily negotiable.

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P.E.R.C. NO. 2003-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-22

CINNAMINSON SUPERVISORS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Cinnaminson Township Board of Education for a restraint of advisory arbitration of a grievance filed by the Cinnaminson Supervisors' Association. The grievance contends the non-renewal of a teacher's contract as department chairperson. The Commission will not restrain advisory arbitration of grievances. Whether the parties have agreed to advisory arbitration of this type of dispute is an issue of contractual arbitrability outside the Commission's jurisdiction.

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