

P.E.R.C. NO. 97-119

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP,

Appellant/Cross-Respondent,

-and-

Docket No. IA-95-110

FOP LOCAL 28,

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Township of Cherry Hill and FOP Lodge 28. The Commission remands the matter to the arbitrator for reconsideration in accordance with its opinion. The Township had appealed the interest arbitration award and the FOP had cross-appealed.

With respect to the Township's allegation that the award was issued 20 days late, the Commission finds that this issue is more appropriately addressed under N.J.A.C. 19:16-5.9.

With respect to the Township's allegation that the arbitrator relied on evidence gained in mediation sessions, the Commission was not persuaded that the arbitrator improperly relied on such information.

With respect to the Township's allegation concerning health benefits, the Commission finds that a remand is necessary because the arbitrator expressed an improper presumption and did not analyze all the arguments and evidence presented concerning the proposal.

With respect to the FOP's argument that the arbitrator had no

authority to freeze starting salaries, the Commission finds that the arbitrator could conclude that the issue of the appropriate starting salary was subsumed within the larger issue of across-the-board salary amounts. The Commission rules that the arbitrator may keep this provision in the award, if he chooses.

With respect to the FOP's argument that the arbitrator had no authority to change the biweekly pay date, the Commission agrees and finds that the issue was not presented by either party. A new award may not contain this provision.

With respect to the Township's argument that the arbitrator's analysis of salary, clothing and maintenance allowance issues was cursory and focused too heavily on the Township's "ability to pay" and police salaries in surrounding communities, the Commission finds no fundamental deficiencies in the arbitrator's consideration of the statutory criteria with respect to these issues. The Commission will not disturb the portions of the award concerning salary increases and clothing and maintenance allowances absent an independent reason for a remand but holds that the arbitrator may, however, choose whether or not to re-evaluate these portions of the award in connection with his evaluation of the evidence and arguments concerning the Township's health benefits proposal.

With respect to the Township's argument that the arbitrator did not "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section," the Commission finds that the arbitrator must comply with this statutory directive.

The Commission finds an inconsistency in the arbitration award concerning the date on which the cash-in option for the clothing allowance becomes effective. If this provision is retained, the arbitrator should clarify this apparent inconsistency.

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. 97-120

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET RARITAN VALLEY SEWERAGE  
AUTHORITY,

Petitioner,

-and-

Docket No. SN-97-34

UTILITY WORKERS UNION OF AMERICA,  
AFL-CIO, LOCAL No. 423,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Somerset Raritan Valley Sewerage Authority for a restraint of binding arbitration of a grievance filed by the Utility Workers Union of America, AFL-CIO, Local No. 423. The grievance contests the Authority's decision not to promote Roy Han to the posted position of operator in the liquid treatment division. The Commission finds that the seniority provision in the parties' collective bargaining agreement goes beyond its precedents and impermissibly requires the Authority to promote an employee based in large part on seniority and to keep that employee in the promotional position permanently unless it can show that the employee is unqualified. The Commission finds that intrusion on management's right to set promotional criteria and make final promotional decisions too significant to be negotiable.

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P.E.R.C. NO. 97-121

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MARLBORO TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-96-103  
SN-96-128

MARLBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Marlboro Township Board of Education for a restraint of binding arbitration of two grievances filed by the Marlboro Education Association. The grievances claim that the Board violated the "just cause" provision of the parties' collective negotiations agreement by using the evaluation process to reprimand a teacher for absenteeism. The Commission finds that the comments in the teacher's evaluation are predominantly evaluative and rejects the contention that this case involves an application of sick leave policies.

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P.E.R.C. NO. 97-122

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG HILLS REGIONAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-16

WATCHUNG HILLS REGIONAL  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Watchung Hills Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Watchung Hills Regional Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it placed letters of reprimand in the personnel files of some, but not all teachers, who did not turn in grades on time. The Commission finds that a memorandum that alleges past misconduct, threatens future discipline, and that is retained in a personnel file may be characterized as a written warning and may be used to justify future and stronger disciplinary actions. The Commission therefore concludes that an arbitrator may determine whether teachers were treated disparately and whether there was just cause to retain the memorandum in their personnel files.

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P.E.R.C. NO. 97-123

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY INSTITUTE OF TECHNOLOGY,

Respondent,

-and-

Docket No. CI-H-96-64

DAVID H. GIEGOLD,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a Motion for Summary Judgment and dismisses a Complaint based on an unfair practice charge filed by David Giegold against the New Jersey Institute of Technology. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act by terminating Giegold, allegedly for insubordination and making threats, the same day he filed a grievance over prior suspensions. The charge also alleges that Giegold was denied a hearing on his grievance. The Commission finds that the charging party did not file his unfair practice charge until more than three months after a Superior Court action was dismissed and has not explained how he was prevented from filing a timely charge.

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P.E.R.C. NO. 97-124

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-H-96-246

BERGEN COUNTY POLICE  
PBA LOCAL 49,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the County of Bergen. The Complaint was based on an unfair practice charge filed by the Bergen County Police, PBA Local 49. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when, during successor contract negotiations, it unilaterally changed terms and conditions of employment by refusing to pay an automatic salary adjustment. The charge also alleges that the employer declined to negotiate during the fall and early winter of 1995-96. The Commission finds that this case involves adjustments to overall salary levels -- adjustments that are conceptually different from increments. The Commission declines to consider a salary increase unrelated to attainment of an additional year of service as part of the status quo. The Commission expresses no comments on the merits of any contractual claim and need not, in this decision, respond to the employer's additional argument that salary indexing is not mandatorily negotiable. In the absence of exceptions, the Commission dismisses the remaining allegations.

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P.E.R.C. NO. 97-125

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and-

Docket No. CO-H-95-244

NEW JERSEY TRANSIT PBA LOCAL 304,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that New Jersey Transit violated the New Jersey Employer-Employee Relations Act by unilaterally requiring police applicants to agree to repay certain training costs if they leave the employ of New Jersey Transit within two years of completing police academy training. The Commission finds the disputed requirement to be a term and condition of employment which intimately and directly concerns the duration of employment of police trainees while they are included in PBA Local 304's negotiations unit. The Commission orders the employer to restore the status quo and make former employees whole for any losses incurred.

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P.E.R.C. NO. 97-126

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MENDHAM BOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-373

MENDHAM BOROUGH EDUCATION ASSOCIATION,

Charging Party.

The Public Employment Relations Commission dismisses a Complaint against the Mendham Borough Board of Education. The Complaint was based on an unfair practice charge filed by the Mendham Borough Education Association. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act by terminating Margaret (Robin) Porter in retaliation for her Association activities. The Commission finds that the Association did not prove that protected activity was a substantial or motivating factor in the decision to deny Porter tenure.

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P.E.R.C. NO. 97-127

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-97-32

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Local 304. The grievance asserts that NJT violated the parties' collective negotiations agreement when it selected among police officers for assignment to a new unit. The Commission finds that public employers have a non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. The employer required special skills and characteristics in seeking officers to start up the new unit and it chose among the applicants accordingly.

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P.E.R.C. NO. 97-128

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST WINDSOR-PLAINSBORO REGIONAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-136

WEST WINDSOR-PLAINSBORO  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of certain contract provisions which the West Windsor-Plainsboro Education Association has proposed be retained in a successor contract with the West Windsor-Plainsboro Board of Education. The Commission finds that a proposal concerning student grading predominantly relates to educational policy and is not mandatorily negotiable. The Commission finds that a proposal that teachers not be required to attend after school or evening activities conflicts with N.J.S.A. 34:13A-23 because it does not permit the Board to assign a qualified staff member if no volunteers are available. This provision is therefore not mandatorily negotiable as written. The Commission finds a proposal concerning the assignment of testing duties to be not mandatorily negotiable. The Commission finds a proposal which would limit the number of reading groups in each class is not mandatorily negotiable. The Commission finds that part of a proposal concerning permitting "full" payment of sick leave is preempted by N.J.S.A. 18A:30-6 and not mandatorily negotiable. The Commission finds that the portion of a provision which sets deadlines for notice of increment withholdings interferes with the Board's ability to continue to evaluate a teacher's performance until the

end of the school year to determine whether an increment should be withheld and is therefore not mandatorily negotiable. The Commission finds that paragraph 3 of an appendix to the recently expired contract which relates to the payment of increments is not mandatorily negotiable.

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