

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT BEACH,

Petitioner,

-and-

Docket No. SN-2022-016

TEAMSTERS LOCAL 469,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, attorneys (Ryan S. Carey, of counsel and on the brief)

For the Respondent, Kroll Heineman Ptasiewicz & Parsons, attorneys (Raymond G. Heineman, of counsel and on the brief)

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Point Pleasant Beach for a restraint of binding arbitration of a grievance filed by Teamsters Local 469 asserting that the Borough improperly terminated the grievant from her provisional position as a Code Enforcement Officer/Zoning Officer in violation of Civil Service Commission (CSC) regulations and the parties' collective negotiations agreement (CNA), and failed to provide the grievant leave she allegedly requested under the Family Leave Act. The Commission finds arbitration is not preempted by a CSC regulation requiring the removal within 30 days of provisional employees who "fail to file for and take" an announced CSC examination, where the same regulation states that the 30-day period may be extended "for good cause." The Commission cannot conclude the regulation speaks in the imperative and left nothing to the Borough's discretion, where it neither sought an extension nor waited the full 30 days despite the grievant (within the relevant period) having successfully appealed an initial, erroneous conclusion of the CSC that she lacked the "minimum requirements in experience" for the position; and the CSC returned her name to the list of eligibles, thus completing the examination process. The Commission further finds that statutes setting terms and conditions of employment such as family leave are generally incorporated into CNAs, and grievances alleging that such statutes have been violated are 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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY BOARD OF
SOCIAL SERVICES,

Petitioner,

-and-

Docket No. SN-2022-015

CWA LOCAL 1032,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of the CWA's grievance contesting the Board's distribution of job duties of the Human Service Specialist 3 (HSS3) title when it directed only the grievant to perform Medicaid fair hearing liaison work. Finding that the Medicaid fair hearing liaison duties are part of the grievant's normal job duties and included in the HSS3 job specification, the Commission holds that the Board has a managerial prerogative to determine it is more efficient to assign the Medicaid fair hearing duties to the grievant instead of evenly distributing them among all of its HSS3 employees.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL FEDERATION OF PROFESSIONAL
AND TECHNICAL ENGINEERS, LOCAL 194,

Respondent,

-and-

Docket No. CI-2015-021

KLARIDA PAPAJANI,

Charging Party.

NEW JERSEY TURNPIKE AUTHORITY,

Respondent,

-and-

Docket No. CI-2015-026

KLARIDA PAPAJANI,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants both Local 194's and the Authority's motions for summary judgment on unfair practice charges filed by Papajani (Charging Party) against them. The charge against Local 194 alleges that it violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), by refusing to process the grievances, failing to call witnesses or properly represent her at her disciplinary hearing, failing to inform her that her appeal was denied before the arbitration deadline, and for working with the Authority to terminate her. The charge against the Authority alleges that it retaliated against her for filing a Division on Civil Rights (DCR) discrimination claim and a Public Employees Occupational Safety and Health (PEOSH) safety claim. She also alleged that the Authority failed to inform her of her hearing results before the arbitration deadline. Finding that Local 194's decision not to call witnesses during her disciplinary hearing was a disagreement on strategy, the Commission does not find that Local 194's representation of the Charging Party during the Authority's internal hearing and appeals process was arbitrary, discriminatory, or in bad faith. Finding that Local 194 and the

Authority agreed to waive the Authority's timeliness objection to the arbitration and that the arbitration proceeded on its merits, the Commission finds that the Charging Party's allegations related to missing the arbitration deadline are moot. The Commission further finds that Local 194 did not breach its duty of fair representation by negotiating a settlement agreement for her that she revoked, and that there are no facts indicating that Local 194's representation of her during the arbitration was arbitrary, discriminatory, or in bad faith. The Commission finds no facts demonstrating that the Authority's actions in terminating the Charging Party interfered with her statutory rights in violation of subsection 5.4a(1) of the Act, as a neutral third-party arbitrator determined that it had just cause to terminate her. Finally, the Commission finds that the Charging Party's 5.4a(3) retaliation claim must be dismissed because she did not engage in protected activity under our Act, but she filed claims based on other laws not in the Commission's jurisdiction and that have their own forums for review.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HO-HO-KUS,

Petitioner,

-and-

Docket No. SN-2022-014

PBA LOCAL 353,

Respondent.

Appearances:

For the Petitioner, Wiss & Bouregy, P.C., attorneys
(Timothy J. Wiss, of counsel and on the brief)

For the Respondent, Loccke, Correia, & Bukosky,
attorneys (Michael A. Bukosky, of counsel and on the
brief; Corey M. Sargeant, of counsel and on the brief)

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, the request of the Borough of Ho-Ho-Kus for a restraint of binding arbitration of a grievance filed by PBA Local 353 asserting that the Borough failed to comply with procedures set forth in its Promotional Ordinance governing the process for promotion to the position of police captain. The Commission finds that the PBA's challenges relating to the Borough's determination of promotional criteria, its weighting and application of criteria, and its determination of the best-qualified candidate are not legally arbitrable. The Commission finds that an arbitrator may determine whether any evidence establishes a change in the announced promotional criteria or procedures. The Commission further finds that alleged failures by the Borough to provide the grievant with requested documents underlying the promotional process are generally legally arbitrable, and the Borough may raise any specific confidentiality concerns to the arbitrator. Finally, the Commission finds that arbitration is not precluded under principles of res judicata and collateral estoppel, because the PBA was not a party to the grievant's separate appeal under the Promotional Ordinance, nor do the grievance and the appeal involve the same issues.

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. 2022-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BRIGANTINE,

Petitioner,

-and-

Docket No. SN-2022-020

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 331,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies, in part, and grants, in part City of Brigantine's request for a restraint of binding arbitration of Local 331's grievance, that the City violated the parties' collective negotiations agreement (CNA) when it failed to promote the grievant by not properly considering his years of experience and abilities. The Commission finds that Local 331's grievance is not legally arbitrable to the extent that it is challenging the City's decision to not promote the grievant based on its determination of which candidate was best qualified for the promotion. However, the Commission declines to restrain arbitration to the extent that Local 331's grievance is challenging whether years of experience were considered to distinguish equally qualified candidates in accordance with the CNA. The Commission finds that, on this record, there was insufficient evidence to determine which qualifications the City preferred and how it applied those qualifications in the grievant's promotional process.

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. 2022-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT BUS OPERATIONS INC.,

Petitioner,

-and-

Docket No. SN-2022-021

AMALGAMATED TRANSIT UNION,
NEW JERSEY STATE COUNCIL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that an arbitration award concerning ATU State Council's (ATU) grievance challenging the termination of the grievant, a bus operator, for a "refusal to test" under NJTBO's Drug and Alcohol Policy (the Policy) was legally arbitrable, in part, and not legally arbitrable, in part. The case was referred to the Commission from the Superior Court - Chancery Division's review of the parties' arbitration award, which reinstated the grievant with a five-day suspension. The Commission finds that the arbitration award was legally arbitrable to the extent it reviewed whether the specific discipline imposed on the grievant was proper in relation to her violation of the Policy. However, the Commission further finds that the arbitration award was not legally arbitrable to the extent it found that there was not an actual "refusal to test" triggering the regulatory return-to-duty process and to the extent it capped or created a deadline for grievant's follow-up drug and alcohol testing due to the preemption of certain regulations in 49 C.F.R. Part 40 and 49 C.F.R. Part 655.

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.