

P.E.R.C. NO. 98-152

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-97-75

LAWRENCE ZAMENSKY,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practice's refusal to issue a Complaint based on an unfair practice charge filed by Lawrence Zamensky against the State of New Jersey. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act when it terminated him from his position as a senior corrections officer. The Commission finds the charge to be untimely under N.J.S.A. 34:13A-5.4c. The Commission also agrees with the Director that the charge does not allege a continuing violation of the Act.

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. 98-153

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-58

PARSIPPANY-TROY HILLS
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance contests the withholding of a school psychologist's salary increment for the 1997-1998 school year. The Commission finds that this increment withholding predominantly relates to the evaluation of the teaching staff member's performance as a school psychologist and child study team member. Accordingly, any appeal must be made to the Commissioner of Education.

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P.E.R.C. NO. 98-154

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-98-61

FOP LODGE 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Newark for a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12. The grievance contests an order that all police officers be sprayed in the face with oleoresin capsicum, popularly called pepper mace, as part of their training in how to use that chemical agent. The Commission finds that the City's interest in requiring officers to be trained in how to react and how to protect themselves in the confusion caused by a riot or in the heat of an altercation with a violent suspect outweighs the employees' health and safety concerns. The Commission also finds that this training requirement is not permissively negotiable. This aspect of the City's policy for controlling riots and dangerous altercations without resort to deadly force represents an important matter of governmental policymaking and is non-negotiable.

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P.E.R.C. NO. 98-155

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-54

CHERRY HILL ASSOCIATED
SUPERVISORY PERSONNEL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Cherry Hill Board of Education for a restraint of binding arbitration of a grievance filed by the Cherry Hill Associated Supervisory Personnel. The grievance asserts that the Board terminated a dispatcher without just cause and filled a new position with a new employee doing the same duties as the dispatcher. The Commission finds that the Board has a right to privatize its bus transportation services and has a managerial prerogative to create a position that includes some of the former dispatcher's duties. The Board also has a right to fill the new position from among qualified candidates. The Commission grants the restraint to the extent the grievance challenges the Board's right to create and fill the position.

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P.E.R.C. NO. 98-

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN BOROUGH BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-29

FRANKLIN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Franklin Borough Board of Education for a restraint of binding arbitration of a grievance filed by the Franklin Education Association. The grievance contests the withholding of a school nurse's increments for the 1997-1998 school year. School nurses are teaching staff members, but do not have full-time teaching responsibilities. A statute reserves certain nursing duties to certificated nurses. The Commission holds that the statutory duties implicated in this withholding constitute teaching performance for purposes of N.J.S.A. 34:13A-27 and predominantly relate to teaching performance. Accordingly, any appeal must be made to the Commissioner of Education.

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P.E.R.C. NO. 98-157

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COLTS NECK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-96-305

COLTS NECK EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Colts Neck Board of Education. The Complaint was based on an unfair practice charge filed by the Colts Neck Education Association. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when it refused to pay personnel hired to teach in a before-school remedial program pro-rated salaries based on the teachers' salary guide. The Commission agrees with the Hearing Examiner that the charge essentially involved a good faith dispute over the proper interpretation of a negotiated agreement. The Commission also agrees that no facts support an assertion that the Board interfered with, restrained or coerced employees in violation of the Act or that it acted out of anti-union animus.

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P.E.R.C. NO. 98-158

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF FIRE COMMISSIONERS,
MONROE TOWNSHIP FIRE DISTRICT NO. 2,

Respondent,

-and-

Docket No. CO-H-96-290

MONROE TOWNSHIP FIREFIGHTERS
ASSOCIATION, IAFF LOCAL NO. 3170,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Board of Fire Commissioners, Monroe Township Fire District No. 2. The Complaint was based on an unfair practice charge filed by the Monroe Township Firefighters Association, IAFF Local No. 3170. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act by abolishing the negotiations unit position of fire lieutenant/fire official and creating the non-unit position of executive director/captain to "avoid entanglement" with the Association. The Association alleges that the Board's actions were motivated by anti-union animus. The Commission finds that an employer has a managerial right to reorganize the way it delivers government services and, it may, by necessity, be able to transfer job duties to non-unit employees without incurring a negotiations obligation. The Board restructured the department and created the executive director/captain position because it determined that the supervisor in charge of the firefighters should also be responsible for formulating policies and advising the Board on negotiations and grievances. The Commission, therefore, finds that the Board did not violate the Act.

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P.E.R.C. NO. 98-159

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT
OF MILITARY AND VETERANS AFFAIRS),

Petitioner,

-and-

Docket No. SN-98-21

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Department of Military and Veterans Affairs) for a restraint of binding arbitration of a grievance filed by the Communications Workers of America. The grievance asserts that the employer was contractually required to lay off employees in the non-supervisory titles of Armorer 3 and Armorer 4 before it laid off more senior employees in the supervisory titles of Armorer 1 and Armorer 2. The Armorer 3 and Armorer 4 titles belong in a separate negotiations unit not represented by CWA. Given the circumstances of this case, where a grievance is seeking to have non-unit employees laid off and, as a result, to increase the number of supervisors vis-a-vis non-supervisors, the Commission restrains binding arbitration.

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P.E.R.C. NO. 98-160

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FAIR LAWN,

Respondent,

-and-

Docket No. CO-H-95-230

PBA LOCAL NO. 67,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the request of PBA Local No. 67 to withdraw an unfair practice charge it filed against the Borough of Fair Lawn. A Complaint was issued on the charge and a Hearing Examiner has recommended dismissing the Complaint. The Borough opposes the PBA's request to withdraw the charge, maintaining that it has an interest in knowing that it justifiably disciplined one of its officers for violating departmental policies. The Commission concludes that a withdrawal and dismissal with prejudice is appropriate. A dismissal with prejudice after the issuance of the Hearing Examiner's report is a final adjudication on the merits and the PBA is prevented from filing another charge alleging that the same actions violated the Act.

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P.E.R.C. NO. 98-161

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF JEFFERSON,

Petitioner,

-and-

Docket No. SN-98-59

INTERNATIONAL UNION OF PRODUCTION,
CLERICAL AND PUBLIC EMPLOYEES,
LOCAL 911,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Jefferson for a restraint of binding arbitration of a grievance filed by the International Union of Production, Clerical and Public Employees, Local 911. The grievance alleges that the Township violated past practices when it did not make an overtime assignment in accordance with a seniority list. The Commission states that the Township would have had a prerogative to deviate from that list if its assignment of the less senior employee rather than another employee was necessary to meet the deadline for installing a new telephone system. But Local 911 has raised a factual dispute concerning the nature of the overtime assignment and whether other more senior employees could have performed the work on time. The Commission permits the arbitrator to consider that factual dispute initially as well as the parties' contractual claims and disputes. The Commission retains jurisdiction to reassess the employer's managerial prerogative defense in the event the arbitrator finds a contractual violation.

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P.E.R.C. NO. 98-162

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALLINGTON,

Petitioner,

-and-

Docket No. SN-98-9

PBA LOCAL 321,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Wallington for a restraint of binding arbitration of a grievance filed by PBA Local 321. The grievance contests a police director's directive concerning overtime assignments. The Commission concludes that although the allocation of overtime is generally negotiable, a public employer has a right to deviate from a negotiated allocation system when necessary to effectuate governmental policy. The Commission finds that the employer has presented sufficient evidence to show that enforcement of this alleged contractual right would substantially limit its right to provide the supervision it deems appropriate.

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P.E.R.C. NO. 98-163

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY and GUARDS AND SECURITY,
LOCAL 1412,

Respondents,

-and-

Docket No. CI-H-96-5

ROBERT K. ANDES,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies motions to dismiss made by the New Jersey Sports & Exposition Authority and Guards and Security Local 1412 and remands the matter to the Hearing Examiner for further proceedings. The motions sought to dismiss, at the end of the charging party's case-in-chief, a Complaint based on an unfair practice charge filed by Robert K. Andes against the respondents. The Commission concludes that based on the record to date and granting every reasonable inference to the charging party, it can infer he was discharged without cause and that the union's unexplained failure to pursue his grievance was arbitrary, discriminatory or in bad faith. The Commission declines, at this stage, to answer whether the employer's alleged breach of contract coupled with the union's alleged breach of the duty of fair representation could constitute an unfair practice against both the employer and the union.

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P.E.R.C. NO. 98-164

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and-

Docket No. CO-98-291

DOVER TOWNSHIP POLICE
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration filed by the Dover Township Police Officers Association. The Association requests reconsideration of a Commission Designee's denial of interim relief in its unfair practice charge filed against the Township of Dover. The charge alleges that the employer violated the Act when, after the parties entered into an agreement about police employment for outside vendors, the Township promulgated a policy severely limiting the amount of work available to unit members. Specifically, the Township now requires vendors to pay one month's cost of police services in advance. The Association alleges that this precondition has resulted in a significant decrease in outside employment opportunities. Given the contractual defenses to the unfair practice charge, the Commission finds no extraordinary circumstances warranting reconsideration of the interim relief decision.

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P.E.R.C. NO. 98-156

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CI-90-25

BENJAMIN ADAMS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices for further proceedings an unfair practice charge filed by Benjamin Adams against the City of Jersey City. Under the particular circumstances of this case, where the charging party was never notified that his case was dismissed and where he asserts that his attorney told him that it was likely that the Commission was holding the case pending related federal litigation, the Commission reopens the case and directs that an exploratory conference be held. If the case is not settled after the conference, the Director can then make a formal determination as to whether a Complaint should issue.

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