

P.E.R.C. NO. 2008-25

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2007-080

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 617,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that an arbitration award issued to resolve a grievance filed by the Service Employees International Union, Local 617 against the City of Newark does not conflict with N.J.S.A. 40A:9-154.1. The City sought a declaration that N.J.S.A. 40A:9-154.1 preempts an arbitration award finding that a school crossing guard was terminated without just cause and reinstating her to a one-year term. The Commission agrees that the statute limits appointments of school crossing guards to one-year terms, but concludes that the award does not conflict with the statute.

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.

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Appearances:

For the Petitioner, Aney K. Chandy, Corporation Counsel  
(Brendan E. Egan, Assistant Corporation Counsel, on the  
brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Arnold Shep Cohen, on the brief)

DECISION

On June 18, 2007, the City of Newark petitioned for a scope of negotiations determination. The City seeks a declaration that N.J.S.A. 40A:9-154.1 preempts an arbitration award finding that a school crossing guard was terminated without just cause and reinstating her to a one-year term. We agree that N.J.S.A. 40A:9-154.1 limits appointments of school crossing guards to one-year terms, but conclude that the award does not conflict with the statute and deny the petition.

The parties have filed briefs and exhibits. These facts appear.

The SEIU represents all crossing guards. Iris Adams-Baldwin has been employed as a school crossing guard since 2003. Her normal work year runs from September through June.<sup>1/</sup> On August 8, 2006, the City issued Adams-Baldwin a Final Notice of Disciplinary Action that sought removal. She filed a grievance alleging she was terminated without just cause and seeking reinstatement and back wages. Arbitration hearings were held on May 14 and June 5, 2007. The record closed on June 12, 2007. This petition was filed on June 18, 2007. Because the petition preceded the arbitration award, we allow the filing. See Butler Bd. of Ed., P.E.R.C. No. 96-24, 21 NJPER 358 (¶26222 1995).

On July 12, 2007, the arbitrator issued an award finding that Adams-Baldwin had been effectively reappointed for the 2006-2007 school year and holding that the City did not have just cause for then removing her. He concluded that a nine-day suspension was the appropriate penalty. The arbitrator ordered Adams-Baldwin reinstated for the 2006-2007 year and remanded the matter to the parties for benefit and back pay computations. The arbitrator reasoned:

The record demonstrates that school crossing guards work a ten (10) month schedule from September to June. The instant *Final Notice of Disciplinary Action* was issued on August 8, 2006 and uses the term "removal." On this basis, I conclude that the City did not

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<sup>1/</sup> Article XXVIII of the agreement provides that some crossing guards also work during the summer.

choose to not renew Ms. Baldwin's contract, but rather chose to discharge her from the position. The decision was made in mid August of 2006, and from my perspective contemplates continued employment for another year, as had been the case before. This construction is also consistent with Article XXX of the C.B.A., as well as the statutory framework, which permit appointments for one (1) year, which may be revoked for cause.

Ms. Baldwin accordingly should have been reinstated to duty for the September 2006 to June 2007 duration worked by school crossing guards, which admittedly has now passed. The matter is therefore remanded to the parties for back pay and benefit computation purposes, with jurisdiction retained to assist with any remedial considerations.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v.

Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.  
[Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

An otherwise mandatorily negotiable term and condition of employment may be preempted by a statute or regulation that

expressly, specifically and comprehensively fixes a term and condition of employment. Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982). The City asserts that N.J.S.A. 40A:9-154.1 preempts reinstating Adams-Baldwin for the 2006-2007 school year.

N.J.S.A. 40A:9-154.1 provides, in part:

The governing body, or the chief executive, or the chief administrative officer, as appropriate to the form of government of any municipality, may appoint adult school crossing guards for terms not exceeding one year and revoke such appointments for cause and after proper hearing before the chief of police or other chief law enforcement officer of the municipality.<sup>2/</sup>

This statute limits appointments of school crossing guards to a maximum one-year term. The arbitrator found that Adams-Baldwin had been effectively reappointed for the 2006-2007 school year and his reinstatement order was limited to a one-year period consistent with the statute. Our scope of negotiations jurisdiction does not extend to questions of fact, which are to be decided by the arbitrator and reviewed by the courts. See Ridgefield Park. Thus, for purposes of this decision, we must accept the arbitrator's findings that Adams-Baldwin was reappointed for the 2006-2007 school year and that her employment was then unjustly terminated. Accordingly, we find that N.J.S.A.

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<sup>2/</sup> Article XXX of the parties' agreement, "Term of Employment," mimics the opening sentence of the statute.

40A:9-154.1 does not preempt reinstatement and deny the City's petition.

ORDER

The request of the City of Newark for a declaration that N.J.S.A. 40A:9-154.1 preempts the arbitration award is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: October 25, 2007

Trenton, New Jersey