

P.E.R.C. NO. 2006-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CUMBERLAND COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2006-041

CUMBERLAND COUNTY COLLEGE
FACULTY ASSOCIATION/NJEA,

Respondent.

Appearances:

For the Petitioner, Basile & Testa, P.A., attorneys
(Todd W. Heck, on the brief)

For the Respondent, Julie Giordano, Field
Representative, New Jersey Education Association

DECISION

On November 16, 2005, Cumberland County College petitioned for a scope of negotiations determination. The College seeks a restraint of advisory arbitration of a grievance filed by the Cumberland County College Faculty Association/NJEA. The grievance alleges that contractual promotion procedures were violated.

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

The Association represents faculty members. The parties' collective negotiations agreement is effective from July 1, 2003

through June 30, 2006. The grievance procedure ends in advisory arbitration.

Judy Capuzzi applied for a promotion to Assistant Professor I. The promotion was denied by her immediate supervisor. Her appeal was denied at all levels. On August 22, 2005, the Association filed a demand for arbitration alleging that contractual procedures had been violated. This petition ensued.

According to the Association, an employee denied a promotion must receive a letter stating why the application was not approved and offering suggestions for improving the application. The College asserts that Capuzzi received the required explanation.

We will ordinarily dismiss a petition seeking a restraint of advisory arbitration without determining the negotiability of the underlying subject matter. Englewood Cliffs Bd. of Ed., P.E.R.C. No. 82-21, 7 NJPER 507 n. 5 (¶12225 1981); see, e.g., Cinnaminson Bd. of Ed., P.E.R.C. No. 2003-44, 28 NJPER 593 (¶33186 2002); Eastampton Bd. of Ed., P.E.R.C. No. 2002-64, 28 NJPER 236 (¶33086 2002). However, where a petition alleges that the subject of the grievance is preempted, we may entertain a request to restrain advisory arbitration since it would be illegal for the parties, even by consent, to implement an advisory award violating a statute or regulation. Englewood Cliffs Bd. of Ed.

The College argues that the New Jersey Higher Education Restructuring Act, N.J.S.A. 18A:3B-1 et seq., altered the decision-making hierarchy for county colleges and bars any interference by even an "advisory arbitrator into essential management prerogatives of a county college." It has not, however, cited to any specific statute or regulation governing this dispute. The Association responds that the higher education statute did not repeal the collective negotiations rights of employees at institutions of higher education.

A statute or regulation will be preemptive if it expressly, specifically, and comprehensively fixes an employment condition and thereby eliminates the employer's discretion to vary that condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). While N.J.S.A. 18A:3B-1 et seq. restructured the State's oversight of higher education in New Jersey, it did not address or eliminate application of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., to county colleges. Nor does any portion of the statute set promotional procedures that differ from the procedures the Association claims were violated. The grievance may therefore legally be submitted to advisory arbitration.

ORDER

The request of Cumberland County College for a restraint of advisory arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

ISSUED: February 23, 2006

Trenton, New Jersey