

New Jersey Commissioner of Education
Final Decision

Board of Education of the Township of
Neptune, Monmouth County,

Petitioner,

v.

Neptune Township Education Association,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner Neptune Township Board of Education (Board) pursuant to *N.J.A.C. 1:1-18.4*, and the replies thereto by respondent Neptune Township Education Association (Association) and participant New Jersey Public Employment Relations Commission (PERC) have been reviewed and considered.

This matter involves the Board's removal of an employee, Thomasina Savage, for failing to report to work after exhausting her leave time. The Association filed a grievance on Savage's behalf, alleging that the Board violated the parties' collective negotiations agreement (CNA) by denying Savage's request for an extended unpaid leave of absence and terminating her employment. The Board denied the grievance, and the Association filed an arbitration request with PERC. The Board requested that PERC make a "scope of negotiations" determination and restrain arbitration of the grievance. PERC issued a decision in December 2023, determining that

the grievance is legally arbitrable and denying the Board's request. *In the Matter of Neptune Twp. Bd. of Educ. and Neptune Twp. Ed. Ass'n*, PERC Dkt. No. SN-2024-014 (Dec. 14, 2023). The Board did not appeal PERC's decision to the Appellate Division of the Superior Court.

In March 2024, the Board filed the petition of appeal with the Commissioner that is at issue herein, challenging PERC's determination as a usurpation of the Commissioner's jurisdiction over *N.J.S.A. 18A:30-6*, which deals with prolonged absences that exceed an employee's annual and accumulated sick leave. The Association filed a motion to dismiss, and PERC, which was granted permission to participate in the matter, filed briefs in support of the Association's motion.

The Administrative Law Judge (ALJ) found that PERC has exclusive jurisdiction to make scope of negotiations determinations, and that such decisions by PERC are appealable only to the Appellate Division. The ALJ concluded that the Board's petition, in essence, appealed PERC's decision to the Commissioner, which is not permissible because the Commissioner does not have jurisdiction over an appeal of a decision by PERC and cannot grant the relief the Board seeks in the form of an order overturning PERC's decision or an order restraining arbitration between the Board and the Association. The ALJ noted that a long line of cases affords PERC the authority to interpret statutes outside of its jurisdiction – including Title 18A – in reaching its scope of negotiations determinations. The ALJ also found that the Board fully litigated the *N.J.S.A. 18A:30-6* issue before PERC, and is prohibited by the doctrine of collateral estoppel from relitigating that issue before the Commissioner. Finally, the ALJ held that the principles regarding predominant interest determinations – which apply when two agencies transmit similar issues to the OAL – do not apply to this matter, because PERC did not transmit any case to the OAL, and does not

transmit scope of negotiations determinations to the OAL as contested cases. Accordingly, the ALJ dismissed the petition.

In its exceptions, the Board argues that the ALJ erred by “unilaterally assuming that PERC has exclusive jurisdiction over the dispute, without properly considering the risk that critical educational interests may be mishandled.” According to the Board, the Commissioner has jurisdiction and is in the best position to adjudicate this matter, because it involves interpretation of a school law statute. The Board also contends that the ALJ failed to apply the consolidation and predominant interest factors under *N.J.A.C. 1:1-17.5(a)*, and that those factors weigh in favor of the Commissioner exercising jurisdiction. The Board argues that the ALJ erroneously found that PERC could not rule in the Board’s favor without construing Title 18A; the Board believes that PERC could have decided the dispute under the CNA alone, without resorting to statutory interpretation, or could have ruled on the labor law aspects of the dispute while deferring school law interpretations to the Commissioner. Finally, the Board contends that the principle of collateral estoppel cannot bar its petition because PERC is not the tribunal with competent jurisdiction and, therefore, the Board has not had the opportunity to fully litigate the school law issue.

In response, the Association argues that the ALJ properly found that the Commissioner cannot grant the relief sought by the Board, as the Commissioner cannot make or overturn a scope of negotiations determination or restrain a labor arbitration. The Association notes that the Board had recourse to the Appellate Division if it was dissatisfied with PERC’s decision, but the Board failed to file an appeal. The Association contends that PERC is required to interpret other statutes in making a scope of negotiations determination, in order to determine whether

a subject is preempted; in fact, in the proceedings before PERC, the Board invited PERC to interpret *N.J.S.A. 18A:30-6* by claiming that the statute preempted the grievance. PERC's response to petitioner's exceptions raises similar points, and adds that the Appellate Division has previously held that scope of negotiations proceedings that involve an interpretation of school law do not invoke the Commissioner's jurisdiction.

Upon review, the Commissioner concurs with the ALJ that the petition must be dismissed because the Board has failed to state a claim on which the Commissioner may grant relief. The petition specifically requests as relief an order "setting aside the Decision of [PERC]" and an order "restraining the arbitration." As the ALJ concluded, the Commissioner does not have jurisdiction to do either of these things. PERC's decision in this matter was appealable to the Appellate Division, and it can only be reversed by that court; there is no provision in administrative law allowing one State agency to "set aside" the decision of another. The Commissioner also notes that the Board cites no legal authority for the proposition that the Commissioner can restrain a labor arbitration proceeding. Furthermore, an order restraining the arbitration is precisely the relief that the Board sought before PERC, and which PERC denied, making this request functionally a request to set aside PERC's decision. Additionally, the Board seeks an order "in which the Commissioner of Education assumes jurisdiction of the underlying dispute and interpretation of *N.J.S.A. 18A:30-6*." But once again, PERC has already determined that this matter falls within its jurisdiction, making this request merely a re-worded version of the Board's other requests to set aside PERC's decision.

In the PERC matter, the Board made essentially the same argument that it makes here – that *N.J.S.A. 18A:30-6* preempts negotiations. PERC found that it did not, reasoning that the

grievance sought an unpaid leave of absence, while *N.J.S.A. 18A:30-6* addresses the salary of an employee who exhausts all accumulated sick leave. PERC Decision, at 9-10.¹ The New Jersey Supreme Court has made clear that PERC's expertise can and should be applied to interpret various statutes:

In carrying out its duties, PERC will at times be required to interpret statutes other than the Employer-Employee Relations Act. Indeed, in no other way could that body implement our holding . . . that the terms of a collective agreement cannot contravene a specific legislative enactment. To therefore hold that PERC is ousted of jurisdiction in any controversy involving an asserted conflict between a collective agreement and a statute not part of the Employer-Employee Relations Act would deprive our courts of that body's expertise in a large class of scope of negotiations disputes. . . . Consequently, we conclude that PERC's primary jurisdiction does extend to controversies involving asserted conflicts between the Employer-Employee Relations Act and other statutory schemes.

Bd. of Educ. of the Twp. of Bernards v. Bernards Twp. Ed. Ass'n, 79 N.J. 311, 316-17 (1979).

Notably, the *Bernards* matter also involved an interpretation of a provision of Title 18A.

The issues presented by the Board in this matter fall squarely within PERC's authority, as defined by the Supreme Court, and the Commissioner concludes that there is no basis to exercise jurisdiction over these issues. For the same reason, petitioner's argument that collateral estoppel cannot bar its claim because PERC is not the tribunal with competent jurisdiction is rejected. Additionally, petitioner's argument regarding consolidation and predominant interest is rejected. As the ALJ found, there was only one case transmitted to the OAL, so the regulations regarding consolidation and predominant interest are inapplicable.

¹ PERC also found that Savage's termination was disciplinary in nature, making it subject to arbitration pursuant to *N.J.S.A. 34:13A-29*. The Board does not suggest that the Commissioner has jurisdiction to construe Title 34.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

A handwritten signature in black ink, appearing to be 'L. A.', is centered above the title.

COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2025
Date of Mailing: June 2, 2025

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 04135-24

AGENCY DKT. NO. 63-3/24

**NEPTUNE TOWNSHIP
BOARD OF EDUCATION,**

Petitioner,

v.

**NEPTUNE TOWNSHIP
EDUCATION ASSOCIATION,**

Respondent.

Stephen J. Edelstein, Esq., for petitioner (Weiner Law Group, LLP, attorneys)

Keith Waldman, Esq., for respondent (Selikoff and Cohen, P.A., attorneys)

William J. Campbell, IV, Esq., for other participant, New Jersey Public
Employment Relations Commission (Christine Lucarelli-Carneiro, General
Counsel)

Record Closed: February 25, 2025

Decided: March 19, 2025

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Neptune Township Board of Education (Board) seeks to challenge by way of a petition of appeal to the Commissioner of Education (Commissioner) a determination by the Public Employment Relations Commission (PERC) concluding that a grievance filed by respondent Neptune Township Education Association (Association) on behalf of a former Board employee who was terminated for failing to return to work after she exhausted her leave time is legally arbitrable under a collective negotiations agreement (CNA) and not governed by school law.

The Board contends that PERC usurped the Commissioner's jurisdiction over the school laws by concluding that N.J.S.A. 18A:30-6, under which a school board may pay an employee for prolonged absences beyond her available sick leave, did not preempt collective bargaining over extended unpaid leaves of absence. The Board asks the Commissioner to overturn PERC's decision, assume jurisdiction over the dispute under N.J.S.A. 18A:30-6, and issue an order restraining arbitration of the grievance.

In response to the Board's petition of appeal, the Association filed a motion to dismiss in lieu of an answer due to the Board's failure to state a claim upon which relief may be granted. The Association asserts that the Commissioner does not have jurisdiction over the employment dispute, the petition is barred under the entire controversy or collateral estoppel doctrine, and the Commissioner does not have the authority to reverse a final decision by another agency. PERC has submitted a brief in support of the Association's motion.

For the reasons argued by the Association and PERC in their briefs, the Association's motion must be granted, and the Board's petition must be dismissed.

FACTUAL DISCUSSION

In March 2023, the Board removed from employment a longtime paraprofessional, Thomasina Savage, for failing to report to work after exhausting her leave time. In response, the Association, of which Savage is a member, filed a

grievance alleging that the Board violated the parties' CNA by denying Savage's request for an extended unpaid leave of absence and terminating her employment.

After the Board denied the grievance, the Association filed an arbitration request with PERC under N.J.S.A. 34:13A-29. The Board countered by asking PERC to make a "scope of negotiations" determination under N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-1.1 and restrain arbitration of the grievance filed by the Association.

The Board argued in part that "its decision not to extend [Savage's] unpaid leave of absence was a non-negotiable exercise of its statutorily compelled discretion pursuant to N.J.S.A. 18A:30-6," which "preempts any negotiated rule on extended leaves of absence and instead [the Board] must make those determinations on a case-by-case basis."¹

On December 14, 2023, PERC issued a written decision denying the Board's request and determining that the grievance is legally arbitrable. In doing so, PERC concluded that "N.J.S.A. 18A:30-6 addresses the salary of an employee who exhausts all accumulated sick leave" and "does not 'expressly, specifically and comprehensively' preempt the issue of [Savage's] request for an extended unpaid leave of absence." Thus, "[t]he statute does not address the Board's individual discretion when determining whether or not to extend an unpaid absence after the exhaustion of sick leave," and that issue is legally arbitrable under the parties' CNA.

The Board did not appeal PERC's determination to the Appellate Division as provided under N.J.S.A. 34:13A-5.4(d). Instead, in March 2024, the Board filed with the

¹ Under N.J.S.A. 18A:30-6:

When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

[Ibid.]

Commissioner a petition of appeal challenging PERC's determination as a usurpation of the Board's authority under, and the Commissioner's jurisdiction over, N.J.S.A. 18A:30-6.

The Association responded by filing with the Commissioner a motion to dismiss the Board's petition in lieu of an answer under N.J.A.C. 6A:3-1.5(g) and N.J.A.C. 6A:3-1.10. The Commissioner subsequently transmitted the Board's petition and the Association's motion to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, and the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1-1.1 to -21.6. The record was reopened to conduct a status conference call with the parties on February 25, 2025, at that time the record closed.

The Association's Motion to Dismiss

The Association argues that the Board's petition must be dismissed for these reasons: (1) the Commissioner does not have jurisdiction because "the present matter is not a dispute arising under the school laws" but "a contractual dispute arising under the parties' [CNA]"; (2) the petition is barred under the entire controversy or collateral estoppel doctrine because the Board fully litigated its claim under N.J.S.A. 18A:30-6 before PERC; and (3) the Commissioner cannot grant the Board's requested relief in the form of overturning a final decision by another agency.

PERC, which is not a party in this case, supports the Association's motion. According to the agency, "PERC issued a decision that determined the grievance involved in this case could proceed to arbitration" and "PERC, and only PERC, has exclusive jurisdiction to make this arbitrability determination." PERC's arbitrability determination is appealable to the Appellate Division under N.J.S.A. 34:13A-5.4(d), and not the Commissioner of Education, even if PERC's decision involved an interpretation of a school law. As such, the Board's petition must be dismissed.

In opposition, the Board argues that its petition is properly before the Commissioner due to that agency head's primary jurisdiction over the school laws,

including N.J.S.A. 18A:30-6. In the Board's view, the Commissioner, and not PERC, has the authority to interpret N.J.S.A. 18A:30-6.

The Board cites N.J.A.C. 1:1-17.5, which governs predominant interest determinations when consolidated contested cases before the OAL involve multiple agencies, for the proposition that the Commissioner has the predominant interest over this dispute, that the "scope of negotiations" issue is separate and severable from the N.J.S.A. 18A:30-6 issue, and that the Board is not asking the Commissioner "to rule on the negotiability of the cessation of Ms. Savage's employment, but only on the scope of a board of education's discretion to grant or deny an extended unpaid leave of absence under [N.J.S.A. 18A:30-6]."

LEGAL ARGUMENT AND CONCLUSION

The rules of procedure governing petitions of appeal filed with the Commissioner permit a respondent to submit a motion to dismiss in lieu of an answer "on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute, or other good reason." N.J.A.C. 6A:3-1.5(g); N.J.A.C. 6A:3-1.10. However, these education rules do not offer any guidance on the standards by which such motions should be assessed.

The UAPR also do not include such standards but provide that, "[i]n the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with" the UAPR, which are designed "to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay," N.J.A.C. 1:1-1.3(a).

Here, the court rule that fills the void is R. 4:6-2, which, like N.J.A.C. 6A:3-1.5(g) and N.J.A.C. 6A:3-1.10, allows for motions to dismiss. And since R. 4:6-2 serves the interests of time and expense and may help achieve just results, it is compatible with the UAPR's purposes, and thus it is appropriate to assess the Association's motion to

dismiss in lieu of an answer under the standards used by the courts in applying R. 4:6-2.

Under these standards, if the basis for a motion to dismiss is that the petition has advanced no cause of action, or failed to state a claim upon which relief may be granted, “the test for determining the adequacy of [the] pleading [is] whether a cause of action is ‘suggested’ by the facts,” such that the “inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing R. 4:6-2(e); Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988); Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)).

I. The Association’s motion must be granted, and the Board’s petition must be dismissed, because the Board has failed to state a claim upon which the Commissioner may grant relief.

For substantially the same reasons stated in the Association’s and PERC’s briefs, the Board’s petition must be dismissed.

First, the Commissioner does not have jurisdiction over an appeal of a final decision by PERC and cannot grant the relief the Board seeks in the form of an order overturning PERC’s decision or an order restraining arbitration between the Board and the Association. Simply put, this is not how administrative law works.

Under N.J.S.A. 34:13A-5.4(d), PERC has the exclusive jurisdiction over a public employer’s request “to make a determination as to whether a matter in dispute is within the scope of collective negotiations” and “[a]ny [such] determination made by [PERC] . . . may be appealed to the Appellate Division of the Superior Court.” Ibid.

Here, the Board—a public employer—asked PERC to make a scope of negotiations determination. And that is what PERC did, ruling that the employment dispute between the Board and the Association was legally arbitrable under the CNA and that the issue regarding extended unpaid leaves of absence was not preempted by

N.J.S.A. 18A:30-6. Although dissatisfied with PERC's determination, the Board did not follow the statutory appeal procedure by appealing the determination to the Appellate Division; instead, the Board, in essence, appealed PERC's decision to the Commissioner of Education because PERC's decision implicated a school law over which the Board contends the Commissioner has exclusive jurisdiction under N.J.S.A. 18A:6-9.

While it is true that, under N.J.S.A. 18A:6-9, the Commissioner "shall have jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws," this dispute arose under N.J.S.A. 34:13A-5.4(d), which is part of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -64, not the school laws. Yes, PERC interpreted a school law—N.J.S.A. 18A:30-6—in reaching its scope of negotiations determination. But as PERC rightly argues here, the courts have long held that PERC is authorized "to interpret statutes outside of its jurisdiction, including Title 18A."

Indeed, as the Supreme Court explained in Board of Education of the Township of Bernards v. Bernards Township Education Ass'n, 79 N.J. 311 (1979), "PERC has been designated by the Legislature as the forum for initial determination of scope of negotiations matters because of its special expertise in this area." Id. at 316 (citation omitted). And "[i]n carrying out its duties, PERC will at times be required to interpret statutes other than the Employer-Employee Relations Act." Ibid. The Court remarked that to "hold that PERC is ousted of jurisdiction in any controversy involving an asserted conflict between a collective agreement and a statute not part of the Employer-Employee Relations Act would deprive our courts of that body's expertise in a large class of scope of negotiations disputes." Id. at 317. To avoid this unrealistic and unwanted consequence, the Court held that "PERC's primary jurisdiction does extend to controversies involving asserted conflicts between the Employer-Employee Relations Act and other statutory schemes." Ibid.

In short, PERC, not the Commissioner, has jurisdiction over the dispute between the Board and the Association despite the fact that PERC's decision touched upon a

school law. As such, the Board's petition must be dismissed. The Board should have, but did not, appeal PERC's decision to the Appellate Division.

Another reason for dismissing the Board's petition is that, as the Association argues, the Board is attempting to relitigate before the Commissioner the N.J.S.A. 18A:30-6 issue that was conclusively decided by PERC, a legal maneuver that is forbidden under the doctrine of collateral estoppel. That doctrine may be applied "in an administrative case to preclude parties from relitigating issues that have previously been fully litigated in another administrative proceeding." 37 New Jersey Practice, Admin. Law & Practice, § 6.27 (Steven L. Lefelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000). Here, as the Association points out, the Board fully litigated the N.J.S.A. 18A:30-6 issue in the PERC proceeding and, thus, cannot now relitigate that issue before the Commissioner. Again, the Board could have filed—but did not—an appeal of PERC's determination concerning N.J.S.A. 18A:30-6 to the Appellate Division under N.J.S.A. 34:13A-5.4(d).

And contrary to the Board's assertion, this dispute does not implicate the administrative rules concerning consolidation and predominant interest under N.J.A.C. 1:1-17.1 to -17.8. Under those rules "an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency." N.J.A.C. 1:1-17.1. And "[w]hen a motion to consolidate pertains to contested cases filed with two or more State agencies which are asserting jurisdiction, the judge shall determine which agency, if any, has the predominant interest in the conduct and outcome of the matter." N.J.A.C. 1:1-17.5.

The problem with the Board's reliance on or reference to the OAL's consolidation and predominant rules is that they do not apply here. Only one agency head—the Commissioner of Education—transmitted a contested case to the OAL. PERC does not transmit "scope of negotiations" determinations to the OAL for contested case hearings. So, there are not two contested cases to consolidate or for which there needs to be a predominant interest determination. Instead, once again, PERC issued a final decision

on the Board's scope of negotiations determination request, and that decision was appealable to the Appellate Division and the Appellate Division only.

Having reviewed the parties' submissions in support of and in opposition to the within motion, **I CONCLUDE** that the motion papers in this case support the conclusion that the Association's motion to dismiss must be granted, and the Board's petition must be dismissed.

ORDER

It is therefore hereby **ORDERED** that the Neptune Township Education Association's motion must be granted, and the Neptune Township Board of Education's petition must be dismissed. It is **FURTHER ORDERED** that this appeal be **DISMISSED**.

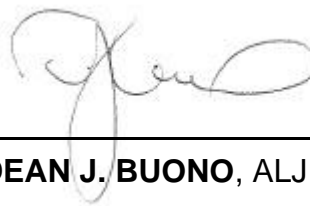
I hereby **FILE** this initial decision with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Acting Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **ACTING COMMISSIONER OF THE DEPARTMENT OF EDUCATION**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

March 19, 2025

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

March 19, 2025

Date Mailed to Parties:

March 19, 2025

DJB/onl