

P.E.R.C. NO. 2023-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2023-017

CWA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses the State's request for a scope of negotiations determination concerning the CWA's grievance alleging that the State violated the non-discrimination clause of the parties' collective negotiations agreement (CNA) with respect to the denial of the grievant's religious exemption request from a COVID-19 vaccination mandate. The Commission finds that because the State's scope petition is not related to the negotiability of a contract provision during negotiations for a successor CNA or a demand for arbitration, and that no special circumstances exist to warrant the issuing of an advisory scope of negotiations opinion, the Commission dismisses the State's scope of negotiations petition.

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, Genova Burns, attorneys (Jennifer Roselle, of counsel and on the brief)

For the Respondent, Weissman & Mintz, LLC, attorneys (Steven P. Weissman, of counsel; Justin Schwam, on the brief)

DECISION

On November 11, 2022, the State of New Jersey (State) filed a scope of negotiations petition supported by a brief and the certification of Loretta P. Sepulveda, its Director of Human Resources Services for the Department of Health. The petition seeks a restraint of binding arbitration of a grievance filed by the CWA. The grievance asserts that the State violated the non-discrimination clause of the parties' collective negotiation agreement (CNA) with respect to the denial of the grievant's religious exemption request from a COVID-19 vaccination mandate.

On December 12, 2022, the CWA filed a letter advising that it withdrew the grievance that was the subject of the instant

petition, and requesting that the petition be dismissed. The CWA advised that other grievances pending at the Governor's Office of Employee Relations that raised the same issue as the instant grievance had also been withdrawn. On December 19, the State filed a letter requesting that its petition be processed despite the CWA's withdrawal of the grievance, asserting that "special circumstances" warrant the exercise of the Commission's scope of negotiations jurisdiction. N.J.A.C. 13-1.1(b)(v). These facts appear.

The CWA represents all employees in the State Executive Branch Administrative/Clerical, Professionals, Primary Level Supervisors and Higher Level Supervisor Units. The State and CWA are parties to a Memorandum of Agreement (MOA) in effect from July 1, 2019 through June 30, 2023. The grievance procedure ends in binding arbitration.

Sepulveda certifies to the following facts. In late 2021, the Centers for Medicare and Medicaid Services (CMS) issued its Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule. In sum, this mandate required adoption of a mandatory COVID-19 policy for employees whose job included access to CMS certified facilities which participated in the Medicare and Medicaid programs.

The Department's Health Facilities Survey and Field Operations staff were notified of the vaccination directives by

way of memoranda dated November 23, 2021 and January 21, 2022. Employees were also reminded of their right to seek reasonable accommodations to the directives for either medical or religious reasons.

The grievant was employed by the Department as a Supervisor of Inspections, Health Facilities Evaluation and Licensing (HFEL). Her job required her to survey health care facilities and certify their compliance or non-compliance with Medicare's requirements. Her position requires access to facilities such as hospitals, psychiatric facilities and nursing homes to ensure regulatory compliance with CMS regulations and Department of Health rules.

The grievant's position was covered by the issued vaccination directives. She submitted a request for a religious accommodation to the directives, which was denied. She was subsequently unable to demonstrate her vaccination status and the Department sought her removal from employment. She was notified of the removal on April 7, 2022. On April 22, the CWA filed a grievance on her behalf. This petition ensued.

N.J.A.C. 19:13-2.2(a)4 provides that a scope of negotiations petition must include, in pertinent part:

A statement that the dispute has arisen:

- i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter that the

other party contends is not a required subject for collective negotiations;

ii. With respect to the negotiability and legal arbitrability of a matter sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance procedure;

\* \* \*

iv. Other than in (a)4i, ii . . . above, with an explanation of any special circumstances warranting the exercise of the Commission's scope of negotiations jurisdiction. . . .

The State's scope petition is not related to the negotiability of a contract provision during negotiations for a successor CNA (N.J.A.C. 19:13-2.2(a)4(i)) or a demand for arbitration (N.J.A.C. 19:13-2.2(a)4(ii)). Thus, we must determine whether "special circumstances" exist pursuant to N.J.A.C. 19:13-2.2(a)4(iv) to warrant processing of the State's petition.

In Cinnaminson Tp. Bd. Of Ed., P.E.R.C. 78-11, 3 NJPER 323 (1977), the Commission established its policy that N.J.S.A. 34:13A-5.4(d) does not extend the Commission's scope jurisdiction to the issuance of advisory opinions without an actual, as opposed to a potential, controversy. Cinnaminson addressed the conditions which would qualify as "special circumstances" warranting the processing of a scope petition in the absence of a demand for arbitration or a dispute over the negotiability of a

contractual provision during negotiations for a successor CNA.

The Commission held as follows:

Where a petitioner has made a prima facie showing that (1) a particular clause in a contract has been declared to be illegal, as opposed to a mandatory or permissive, subject of collective negotiations by an intervening Commission or judicial decision or (2) specific legislation mandates the conclusion that a particular contractual provision is an illegal subject for collective negotiations, the Commission will assert jurisdiction over that matter and will render, where appropriate, a scope of negotiations determination on the issue or issues in dispute.

[Id. at 7.]

We find that there are no special circumstances that warrant our issuing of an advisory scope of negotiations opinion. The State's reliance on Township of Maplewood and FMBA Local 25, P.E.R.C. No. 2023-8, 49 NJPER 183 (¶43 2022) and Township of Maplewood and PBA Local 44, P.E.R.C. No. 2023-12, 49 NJPER 241 (¶54 2022) is misplaced as it provides no support for the special circumstances sought by the State herein.

ORDER

The State of New Jersey's scope of negotiations petition is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos  
voted in favor of this decision. None opposed.

ISSUED: February 23, 2023

Trenton, New Jersey