

I.R. NO. 2007-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE OPERATED
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2007-015

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Designee of the Public Employment Relations Commission denies the request of the Paterson State-Operated School District for a temporary restraint of arbitration of a grievance while its scope of negotiations petition is pending before the Commission. The grievance, filed by the Paterson Education Association, seeks compensation and other relief for a member of the District's secretarial staff, who was allegedly assigned increased duties, including tasks not listed in her job description, that the Association contends are the work of employees in higher job classifications.

The Designee holds that although the District has a right not to fill vacancies resulting from resignations, leaves, transfers and terminations occurring in the office to which the grievant was assigned, the claim for compensation based on performing the work of a higher pay category is mandatorily negotiable and may be submitted to arbitration. Accordingly there are no grounds to restrain the arbitration hearing. While the designee is unable to conclude, based on the documents presented to him, whether the grievance also establishes that the grievant had a "significant and measurable" increase in her workload, the arbitrator may determine if that occurred or if the additional tasks she performed were contemplated by or incidental to her job description.

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Appearances:

For the Petitioner, Schenk, Price, Smith & King,
attorneys (Douglas S. Zucker, of counsel and on the
brief; Lorraine V. Castle, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel; Louis P. Bucceri, of
counsel and on the brief)

INTERLOCUTORY DECISION

On September 28, 2006, the Paterson State-Operated School District petitioned for a scope of negotiations determination. The District sought to permanently restrain arbitration of Grievance No. 05-23, filed by the Paterson Education Association.^{1/} The grievance seeks compensation and other relief for a member of the District's secretarial staff who was

^{1/} Before the petition was filed, an arbitration hearing had been scheduled for October 4, 2006. On that date, the District asked to have the arbitration postponed. At the request of the arbitrator, the Association agreed to postpone the arbitration hearing until October 30, 2006.

allegedly assigned increased duties, including tasks not listed in her job description, that the Association contends are the work of employees in higher classifications.

On September 29, 2006, the Commission sent the parties a letter that, inter alia, required the petitioner to file, on or before October 13, a brief in support of its petition and other pertinent documents.

On the due date, the petitioner filed a brief with supporting exhibits and certifications. It also filed an application for interim relief supported by an additional brief, seeking to temporarily restrain arbitration pending a final determination by the Commission. On October 17, 2006, acting as Commission Designee and pursuant to N.J.A.C. 19:14-9.2(d), I executed an Order to Show Cause, setting October 26 as the return date and directing that the Association file a response to the interim relief application and any supporting documents on or before October 24. The Association has filed a brief in opposition to both the interim relief request and the District's petition, together with supporting certifications and exhibits.

On October 26, 2006, the parties appeared at the Commission's Trenton office and argued orally. At the end of the hearing I denied the District's request for a temporary restraint of arbitration of the grievance.

The Association represents a unit of approximately 3,400 District employees. The parties' collective negotiations agreement is effective from September 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration.

On May 19, 2003, Donna Harper, employed by the District since 1991, was transferred into the District's Office of Facilities as an Administrative Secretary.

Beginning in February 2005 the workload in that office was divided among five or six clerical employees and an accountant.^{2/} That number was, at times, reduced to two, Harper and a Senior Specialist, as a result of the following events:

The resignation of a clerical employee on February 28, 2005;

The transfer of a clerical employee to a secondary school on August 29, 2005;

A long term leave by a clerical employee from September 19, 2005 through March 6, 2006;

The termination of the accountant on March 24, 2005. A replacement was hired on June 28, 2005, but on December 7, 2005 the replacement accountant was transferred to a different department.

In September, 2005, Facilities Director Robert Greuter submitted promotion and salary increase requests for Harper and the Senior Specialist. Both requests stated that the promotions

^{2/} There are separate job descriptions for the positions of Administrative Secretary, Senior Specialist, Facilities Senior Specialist and Contract Manager/Accountant.

were warranted "because of increased duties and exceptional performance." Greuter's cover memo to the District's Director of Human Resources recites the personnel changes and praises both Harper and the Senior Specialist for assuming and completing the work of the departed employees, concluding, "[t]hese are the type of employees we need to retain in the district."^{3/}

The request was denied, but on January 9, 2006, the District added an administrative secretary to the facilities office.

On March 27, 2006, Harper sent a memorandum entitled "Responsibility Log" to Greuter describing the work she had performed over the last several months as affected by personnel changes in the facilities office. Harper's memorandum lists the duties that were originally assigned to her when she began in the facilities office and the additional responsibilities she had been given and performed as a result of the resignations, leaves, terminations, and vacancies in the department. It tracks the duties that had been performed by each departing employee that were subsequently assigned to Harper. For example, Harper notes that she had been required to perform accountant's duties from March 24 through June 28, 2005 (when a replacement was hired) and

^{3/} Greuter's memo does not refer to the accountant. However, on the date his request was submitted, the replacement accountant was working in the facilities office. She was transferred in December, 2005 and there was apparently no accountant in the facilities office at the time the grievance was filed.

then again from December 7, 2005 (when the new accountant was transferred) up through the date of the memorandum.

By letter dated March 13, 2006, the Association filed a grievance on Harper's behalf asserting that the District had "changed her duty assignment, adding significant additional duties and responsibilities to her workload without providing additional commensurate compensation. The grievant also claims that these additional duties and responsibilities are outside of her job description as an administrative secretary and more properly assigned to a senior specialist."

When filed, the grievance sought either the reduction of the work related duties and assignments given to Harper or to have her placed on a salary guide commensurate with those assignments. It also asked for compensation for the time Harper had performed the increased workload. In its brief, the Association states that the grievance relates solely to Harper's right to be paid at the negotiated rates for the duties she is performing. The Association disclaims any challenge to the District's decisions to eliminate or leave vacant clerical positions.^{4/}

The Board, citing Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979), asserts that a

^{4/} The Association states that its demand for a reduction in Harper's duties is proposed as an alternative to requiring the District to continue to pay her at higher rates in the future.

public employer has a managerial prerogative to reduce its workforce. It further argues that any resulting workload increases to remaining employees are not mandatorily negotiable. See Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd NJPER Supp.2d 171 (¶151 App. Div. 1987), certif. den. 108 N.J. 665 (1987); Boonton Bd. of Ed., P.E.R.C. No. 91-59, 17 NJPER 61 (¶22027 1990). The District asserts that these cases and other similar decisions hold that such workload increases are not severable from the exercise of its managerial prerogative to reduce staff. It disputes that the additional tasks Harper performed fell outside her job classification and asserts they were at most, "additional related duties."

The Association contends that Maywood Bd. of Ed. does not apply because the personnel changes did not result from a reduction in force. Instead the staff of the facilities office was reduced by resignations, transfers, long term leaves and a termination. It argues that even if these personnel changes can be analogized to those in Maywood Bd. of Ed., arbitration is nonetheless authorized by Piscataway Tp. Bd. of Ed. and Piscataway Tp. Ed. Ass'n, 307 N.J. Super. 263, 275 (App. Div. 1998), certif. den. 156 N.J. 385 (1998), holding that terms and conditions of employment arising as impact issues are mandatorily negotiable unless negotiations would significantly interfere with the related prerogative.

The Association also asserts that when the additional tasks fall outside the employee's normal job responsibilities, such workload changes are mandatorily negotiable and arbitrable. See e.g. Passaic Valley Water Commission, P.E.R.C. No. 2005-66, 31 NJPER 121 (¶51 2005), aff'd 32 NJPER 139 (¶64 2006); New Jersey Highway Authority, P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd 29 NJPER 276 (¶82 App. Div. 2003).

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975). Where a restraint of binding grievance arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, 155 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975).

The Supreme Court has directed that negotiability rulings are to be made on the facts and circumstances of each case. See Jersey City and POBA and PSOA, 154 N.J. 555, 574 (1998); Troy v. Rutgers, 168 N.J. 354, 383 (2001). Given the facts of this dispute, Maywood Bd. of Ed. is not dispositive.^{5/} That case held that an employer that had a managerial prerogative to reduce the size of its workforce also had a right to assign additional duties, previously performed by the laid off workers, to the remaining employees. Maywood Bd. of Ed. suggested that whenever management has a managerial prerogative to reduce the number of personnel, the impact on remaining employees is not negotiable. In Piscataway Tp. Bd. of Ed., the Appellate Division clarified that terms and conditions of employment arising as impact issues are mandatorily negotiable unless negotiations would significantly interfere with the related prerogative. Piscataway Tp. Bd. of Ed. explains that the Supreme Court has essentially rejected the contrary view expressed in Maywood Bd. of Ed. See Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980). In addition, the Commission had held, even before Piscataway Tp. Bd. of Ed., that a majority

^{5/} For purposes of this interlocutory decision, I find it immaterial that the reduction of personnel in the facilities office was not pre-planned, as in Maywood Bd. of Ed. A public employer has a non-negotiable right not to fill a vacancy, however it may arise. See City of Paterson and Paterson Police PBA, 87 N.J. 78 (1981).

representative could seek compensation for employees who experience significant and measurable workload increases after a reduction in force. Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

Alternatively, even in cases where workload is altered as a result of a public employer's economy-motivated personnel moves, there are instances when the resulting changes are negotiable and arbitrable. These include situations where remaining employees lose duty-free time, are given extended work hours, or are assigned the duties of a higher classification. See Bridgewater-Raritan Bd. of Ed., P.E.R.C. No. 94-43, 19 NJPER 576, 577 (¶24273 1993).^{6/}

The grievance seeks compensation for Harper's workload increases and her performance of work performed by employees in higher job categories.^{7/} Based on the record before me, I am unable to determine whether Harper had a "significant and measurable increase" in the assignments falling within an Administrative Secretary's duties that she assumed from the departing staff. But, the demand for compensation for the

^{6/} Bridgewater-Raritan Bd. of Ed. restrained arbitration but recognized these exceptions to workload changes generated by decisions to reduce staffing.

^{7/} Given the statements in the Association's brief, I find that the grievance is not seeking either an order that the District must fill any vacant position or that it must reduce Harper's present workload.

performance of out of title work of a higher job classification frames a mandatorily negotiable claim that can be submitted to binding arbitration. Whether Harper worked out of title, whether her additional tasks were incidental to her normal job duties, and whether her workload increase was "significant and measurable" can be determined by the arbitrator. As the grievance raises at least one issue that is mandatorily negotiable and arbitrable, the arbitration hearing can proceed.

ORDER

The request of the Paterson State Operated School District for an interim restraint of binding arbitration is denied pending the final decision or further order of the Commission.

DON HOROWITZ
Commission Designee

Dated: November 1, 2006
Trenton, New Jersey