

P.E.R.C. NO. 2004-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY
(OCEAN COUNTY VICINAGE),

Petitioner,

-and-

Docket No. SN-2004-22

NEW JERSEY AFL-CIO JUDICIARY
COUNCIL OF AFFILIATED UNIONS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey State Judiciary (Ocean County Vicinage) for a restraint of binding arbitration of a grievance filed by the New Jersey AFL-CIO Judiciary Council of Affiliated Unions. The grievance alleges that the employer violated the parties' collective negotiations agreement when it assigned an employee in a Judiciary Clerk 4 title to perform clerical duties of employees in lower titles. The Commission concludes that an arbitrator may consider the grievance and determine whether the non-courtroom duties are outside the employee's job description and whether the employer breached the contract by assigning those duties. Should the arbitrator sustain the grievance, the employer may refile its petition for consideration of whether it had a managerial prerogative to cross-train employees by assigning a Judiciary Clerk 4 to perform clerical duties and a Judiciary Clerk 3 to courtroom duties.

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, Peter C. Harvey, Attorney
General (Karen M. Selby, Deputy Attorney General,
on the brief)

For the Respondent, Mark C. Rushfield, attorney,
on the brief

DECISION

On November 3, 2003, the New Jersey State Judiciary (Ocean County Vicinage) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the New Jersey AFL-CIO Judiciary Council of Affiliated Unions. The grievance alleges that the employer violated the parties' collective negotiations agreement when it assigned an employee in a Judiciary Clerk 4 title to perform clerical duties of employees in lower titles.

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

The Council represents support staff, including the title Judiciary Clerk 4 and other court clerk titles. The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration of contractual grievances.

The parties entered into Side Letter #2 on July 24, 2000. It provides, in part, that a group of approximately 150 court clerks would have the title Judiciary Clerk 4. Section 5 provides: "Any employee advanced to the title of Judiciary Clerk 4 will be expected to perform duties at the Judiciary Clerk 4 level, as well as courtroom duties." All remaining court clerks not advanced to Judiciary Clerk 4 were transferred to the Judiciary Clerk 3/Court Clerk title. These employees were to be given preference for advancement to Judiciary Clerk 4 positions as they became available. Effective upon signing the Side Letter, the Judiciary would no longer hire employees in the Court Clerk title, but only in the Judiciary Clerk 3 title.

The job description for support staff describes a Support Staff Band with four levels. Judiciary Clerk 3 is at Level 3 - Journey. Judiciary Clerk 4 is at Level 4 - Mastery/Paraprofessional. The description states that any one position may not include all of the job tasks listed, nor do the examples cover all of the duties which may be performed. It also states

that tasks are cumulative; higher levels include the tasks associated with lower levels.

Carelyn Bloom is a Judiciary Clerk 4. She works in the Ocean County Vicinage. On April 25, 2002, she filed a grievance that states:

It was the promise of negotiations that upon the titles of court clerk/JU-3 and JU-4 being "co-mingled" that those employees hired as court clerks would, in fact, work within that title whenever working. I am continually being taken out of my assignment and being directed to work in a clerical title, and a clerical employee is being assigned to do my job as court clerk. No other court clerks are being so assigned, and this has occurred many times over the past few months. I feel as though this is harassment, and I am being singled out. Attached is the April schedule of days I was pulled from my assigned.

The grievance seeks this relief:

I am a court clerk, and I have 17 years seniority in that title. I object to being told to work as a domestic violence clerk on the whim of a supervisor. The relief I seek is to be permitted to work within the title that I was hired to do, court clerk. Further, whenever my assigned Judge is working, I expect that I will be the court clerk so assigned in the courtroom.

The grievance was denied at level one. The denial stated that the "team leader would continue to assign Ms. Bloom to functions other than that of being in the court room as the needs of the Team dictated."

On September 11, 2002, a hearing officer denied the grievance at step two. He based his decision on his findings

that Section 5 of the Side Letter indicates that any employee advanced to Judiciary Clerk 4 will be expected to perform duties at the Judiciary Clerk 4 level as well as courtroom duties, and that Section 16 of the Agreement indicates that Judiciary Clerk 3/Court Clerks shall not have a proprietary right to courtroom assignment.

On March 6, 2003, a hearing officer denied the grievance at step three. She found that management has the discretion to assign an employee any task within the employee's job description. She concluded that the Side Letter contradicts the grievant's view that employees originally hired as court clerks would retain their assignments in the courtroom. She found that the Side Letter was intended to provide for the cross-training and advancement of Judiciary Clerks; the 150 court clerks who were advanced to Judiciary Clerk 4 are also expected to perform duties beyond the courtroom. In addition, the hearing officer found that the job description makes clear that a Judiciary Clerk 4's duties include those of lower-level judiciary clerks. She concluded:

The Grievant has failed to establish that management violated the Agreement or Side Letter when it reassigned her from the courtroom to another area to do office work. Except for her personal belief, the Grievant produced no evidence that employees originally hired as court clerks would have a priority to courtroom assignments. The Side Letter and job description for Judiciary Clerks demonstrate that no band level has a

priority to any particular assignment; moreover, cross-training and reassignments are made at management's discretion based on the needs of the Judiciary.

On April 8, 2003, the Council demanded arbitration. This petition ensued.

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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated

agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

There is no assertion that a statute or regulation preempts the Council's prerogative claim.

The Judiciary argues that it has a non-negotiable managerial prerogative to assign and cross-train employees according to the needs of the court system. It argues that under the job descriptions, Judiciary Clerk 4 is considered to be the master of the band and as such may be required to perform all of the tasks at each of the four levels. It also argues that it needs to cross-train employees for assignment both in the courtroom and in court offices. As such, it explains that a Judiciary Clerk 4 may be assigned outside the courtroom to allow a Judiciary Clerk 3 to acquire courtroom training. The employer argues that this interest in having employees trained to perform all of the duties in the event of a vacancy or a shortage outweighs Bloom's desire to be assigned only to the courtroom.

The Council argues that the grievance raises two issues: whether the parties' agreement and the Side Letter preclude the Judiciary from assigning lower-level clerical duties to a Judiciary Clerk 4 and, if not, whether the Judiciary has violated

the agreement by assigning those duties to Bloom. It alleges that no other court clerks are being assigned such duties and notes that nothing in the grievance challenges the Judiciary's assignment of higher-level duties to a Judiciary Clerk 3. The Council contends that Section 5 of the Side Letter means that the Judiciary Clerk 4's job description would encompass only those tasks described under Level 4 in the job description, not those under Levels 1 through 3. The Council argues that the assignment of duties outside the job description is a mandatorily negotiable subject and arbitration of that issue would not significantly interfere with the Judiciary's ability to manage its operations. It further argues that even if it were precluded from arbitrating that issue, it would still be entitled to arbitrate the frequency of the assignments to lower-level clerical duties. It also argues that the interest of employees in performing work within their agreed scope of duties outweighs the Judiciary's interest in avoiding the cost of assigning someone else to perform the Judiciary Clerk 3's normal duties or the duties of some other lower-level employee.

Public employers, in general, have a managerial prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park. Employers may unilaterally assign duties if they are incidental to or comprehended within an

employee's job description and normal duties. See, e.g., City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire officers required to perform crossing guard or patrol duties connected to fires); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (bus drivers required to pump gas); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982) (firefighters required to go on fire patrols).

Employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles and beyond their normal duties. See New Jersey Highway Auth., P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd 29 NJPER 276 (¶82 App. Div. 2003) (toll plaza supervisors assigned to cover breaks of toll collectors); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). In some instances, however, an employer may still have a prerogative to assign duties outside an employee's job description -- for example, when necessary to respond to an emergency or provide proper training or supervision. In those instances, severable employment conditions may be mandatorily negotiable -- for example, compensation or rotation of assignments among qualified employees. See, e.g., Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp.2d 215 (¶189 App. Div. 1989) (administrators and guidance counselors given cafeteria and hall supervision).

The union claims that the grievant was assigned duties outside her job description. The employer has raised interrelated contractual and managerial prerogative defenses to that claim. It asserts that the Judiciary Clerk 4 job description permitted assignment of tasks at each of the four clerk levels and therefore permitted cross-training of employees. It also asserts that even if it did not have a contractual right to cross-train, it had a managerial prerogative to do so. An evaluation of these assertions requires an interpretation of the negotiated Side Agreement, a task reserved to an arbitrator. The arbitrator may thus consider the grievance and determine whether the non-courtroom duties are outside Bloom's job description and whether the employer breached the contract by assigning those duties.

Should the arbitrator conclude that the non-courtroom duties were within the Judiciary Clerk 4 job description, the arbitrator may not issue an award that is inconsistent with the employer's prerogative to assign duties. In this way, the employer's prerogative is protected.

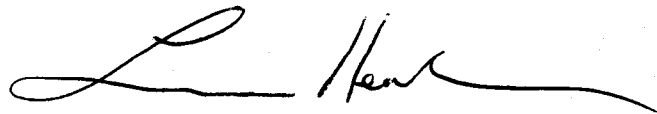
The only remaining question is whether the employer has a managerial prerogative to cross-train even if the Side Agreement does not permit it. Because the answer to that question is intertwined with the arbitrator's interpretation of the Side Agreement, we will defer consideration of that question until

after the arbitrator issues a ruling. Should the arbitrator sustain the grievance and issue an award that the employer believes would interfere with its alleged prerogative to cross-train, the employer may re-file its scope petition. We will then consider the question with the benefit of the facts presented at the arbitration hearing and the contractual interpretations made by the arbitrator.

ORDER

The request of the New Jersey Judiciary (Ocean County Vicinage) for a restraint of binding arbitration is denied. Should the arbitrator sustain the grievance, the employer may re-file its petition for consideration of whether it had a managerial prerogative to cross-train employees by assigning a Judiciary Clerk 4 to perform clerical duties and a Judiciary Clerk 3 to courtroom duties.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners DiNardo, Mastriani and Sandman voted in favor of this decision. None opposed. Commissioners Buchanan and Katz abstained from consideration.

DATED: February 26, 2004
Trenton, New Jersey
ISSUED: February 27, 2004