

P.E.R.C. NO. 2005-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY
(MIDDLESEX VICINAGE),

Petitioner,

-and-

Docket No. SN-2004-080

PROBATION ASSOCIATION OF NEW
JERSEY, PROFESSIONAL SUPERVISORS
UNION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey State Judiciary (Middlesex Vicinage) for a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey, Professional Supervisors Union. The grievance seeks the elimination of an assignment that supervisors complete a Competency Development Plan for every employee who does not achieve all the competencies required for a promotion. The Commission concludes that the employer has a managerial prerogative to require supervisors to complete the Competency Development Plans given that such an assignment is within the scope of a supervisor's job 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, Elaine D. Dietrich, Counsel to the
Director, Administrative Office of the Courts
(Thomas Russo, staff attorney, on the brief)

For the Respondent, Mark Cimino, attorney, on the brief

DECISION

On June 14, 2004, the New Jersey State Judiciary (Middlesex Vicinage) petitioned for a scope of negotiations determination. The Vicinage seeks a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey, Professional Supervisors Union (PANJ). The grievance seeks the elimination of an assignment that supervisors complete a Competency Development Plan for every employee who does not achieve all the competencies required for a promotion.

The parties have filed briefs and exhibits. The Vicinage has filed the certification of its Human Resources Division Manager. These facts appear.

PANJ represents all professional supervisory employees, including supervisors of probation officers. The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration.

Supervisors evaluate probation officers regularly. One purpose of evaluation is advancement, also known as career progression, to the titles of Senior Probation Officer and Master Probation Officer. Career progression is based on years of service and demonstrated proficiency in one's job. In the case of advancement to Master Probation Officer, there must also be a vacancy.

Probation officers are subject to the Career Progression Program developed by the Administrative Office of the Courts. Under this program, supervisors must complete a Career Progression Eligibility Form for each employee in their charge. The form is used to assess the employee's achievement of several performance criteria called competencies. An employee must satisfy all of the competencies to be eligible for advancement.

If the employee fails to satisfy one or more of the competencies, the supervisor must prepare a Competency

Development Plan (CDP). The CDP is a component of the Career Progression Program and is intended to help employees overcome performance weaknesses. The Vicinage requires that a supervisor completing a CDP identify the areas of deficient performance; the skills to be developed; what the supervisor will do to help the employee overcome the deficiencies; how the supervisor will monitor the employee's performance and measure progress; and the date by which the competencies should be achieved.

PANJ filed a non-contractual grievance on behalf of the supervisors seeking the elimination of the CDP. The grievance alleges that having to prepare the plan is cumbersome and time-consuming. The Trial Court Administrator denied the grievance, finding no contract violation and a management responsibility to implement a career progression plan.

A third-step grievance hearing was held. At the hearing, the parties agreed that preparing a CDP was an assignment within the scope of a supervisor's job duties, but PANJ asserted that this work was duplicative, cumbersome, and time-consuming. It also argued that having supervisors complete CDPs violated both a Department of Personnel (DOP) order establishing a demonstration program to determine the effectiveness of a change from a Performance Evaluation and Compensation System to a Performance Advisory System and an agreement that the parties would assess the effectiveness of the change and determine if the modified

process and forms were working satisfactorily. The Vicinage responded that it has a management right to establish the criteria to be used to evaluate employees.

The hearing officer denied the grievance. He found that management has a prerogative to evaluate employees and to require supervisors to prepare plans designed to correct deficiencies in an employee's performance. PANJ demanded arbitration and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

This grievance focuses on the duties that are assigned to supervisors of probation officers, not on the criteria and procedures that govern promotions of probation officers. The cases cited by PANJ are thus inapposite. See Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982); Fair Lawn

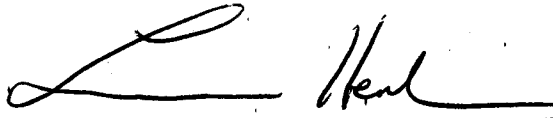
Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); Newark State-Operated School Dist., P.E.R.C. No. 2000-51, 26 NJPER 66 (¶31024 1999). The question is whether the Vicinage has a managerial prerogative to require supervisors to complete CDPs given that such an assignment is within the scope of a supervisor's job duties. The answer is yes, given well-established case law applying the negotiability balancing test and recognizing a prerogative to assign duties within a job description. This record does not present any basis for reaching a different result. Local 195, IFPTE v. State, 88 N.J. 393 (1982); New Jersey State Judiciary, P.E.R.C. No. 2004-51, 30 NJPER 67 (¶22 2004); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985). It is not for us to assess whether an assignment is cumbersome or time-consuming or duplicative; it is instead for the Vicinage to determine whether completing CDPs is an appropriate use of its supervisors' skills and time.

The parties disagree over whether the assignment to complete CDPs violates the DOP order authorizing a demonstration plan. According to the Union, that demonstration plan covers both the Performance Advisory System and the Career Progression System; according to the Vicinage, the Performance Advisory System and the Career Progression System are related, but distinct. We need not resolve this dispute because it involves a non-negotiable subject. The Union may present its argument to DOP.

ORDER

The request of the New Jersey State Judiciary (Middlesex Vicinage) for a restraint of binding arbitration of the grievance seeking to eliminate the requirement that supervisors complete Competency Development Plans is granted.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

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

DATED: September 30, 2004
Trenton, New Jersey
ISSUED: September 30, 2004