

P.E.R.C. NO. 2013-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY
(CAMDEN VICINAGE),

Petitioner,

-and-

Docket No. SN-2012-051

PROBATION ASSOCIATION OF NEW JERSEY
(PROFESSIONAL SUPERVISORS UNION),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey State Judiciary (Camden Vicinage) for a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Professional Supervisors Union). The grievance asserts that the Judiciary violated several provisions of the parties' agreement when it did not fill vacant positions, which resulted in changing staffing ratios and assignments for unit members. The Commission holds that the Judiciary has a non-negotiable managerial prerogative to set staffing levels and assign duties related to employees' normal job functions. The Commission finds that PANJ did not articulate any severable negotiable issues supporting its allegations that hours and safety provisions of the agreement were violated.

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, Office of Counsel to the
Administrative Director (Susanna J. Morris, on the
brief)

For the Respondent, Fox & Fox LLP, attorneys (Bassel
Bakhos, of counsel)

DECISION

On March 15, 2012, the New Jersey State Judiciary (Camden Vicinage) petitioned for a scope of negotiations determination. The Judiciary seeks a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey (Professional Supervisors Union) ("PANJ"). The grievance asserts that the Judiciary violated several provisions of the parties' collective negotiations agreement (CNA) by failing to fill vacant Team Leader positions which caused changing staffing ratios whereby existing Team Leaders were assigned more work.

The parties have filed briefs and exhibits. The Judiciary submitted the certification of James Grazioli, the Human Resources Division Manager. PANJ submitted a certification of one of its attorneys, David I. Fox. These facts appear.

PANJ represents all professional supervisory employees of the Judiciary in all trial court operations and other legal and administrative offices. The Judiciary and PANJ are parties to a CNA with a term of July 1, 2008 through June 30, 2012. The grievance procedure ends in binding arbitration.

In the Criminal Division of the Judiciary's Camden Vicinage, there have historically been enough Team Leaders (official title "Court Services Supervisor 2", or CSS2) such that there was always a staffing ratio of one Team Leader to one Judge. The Judiciary's Professional Supervisory Band Specification provides the following "Level Summary" for Team Leader/CSS2:

Level 2 - Court Services Supervisor 2:
Employees at this level perform professional court services functions and supervise professional, paraprofessional and/or support staff on case related or case management teams.

Around July 2008, two Team Leaders retired and were replaced by Senior Probation Officers performing out-of-title work. On January 1, 2011, two more Team Leaders retired. On February 15, 2011, the Senior Probation Officers were removed from performing

Team Leader duties.^{1/} Therefore, there were now four Team Leader vacancies, with six remaining Team Leaders.

The Judiciary decided not to fill the four Team Leader vacancies; instead it chose to re-allocate the six Team Leaders among its nine Camden Vicinage Criminal Division judges. This staffing reallocation resulted in several of the Team Leaders being assigned to two judges, and all of the Team Leaders having additional assignments or responsibilities.

On March 18, 2011, PANJ filed a grievance asserting that the Judiciary violated multiple provisions of the parties' CNA due to the increased workload placed upon the six remaining Team Leaders, and the effects of such additional work on hours and work schedules. On March 25, 2011, the grievance was denied at Step 1. After Step 2 hearings in April and May 2011, the grievance was denied at Step 2 on May 26, 2011. On November 9, 2011, the grievance was denied at Step 3.^{2/} On November 22, 2011, PANJ demanded arbitration. This petition ensued.

1/ This removal of Senior Probation Officers from Team Leader positions was the result of a settlement of a grievance filed by the PANJ Case-Related Professional Unit against the Judiciary challenging the assignment of those employees to out-of-title work.

2/ In lieu of a Step 3 hearing, the hearing officer held a telephonic pre-hearing conference on July 25, 2011. During the conference, the Judiciary argued that the grievance concerns a managerial prerogative and is therefore not subject to the contractual grievance procedure. The parties submitted briefs on the matter which the hearing officer reviewed prior to issuing his Step 3 decision.

Our jurisdiction is narrow. We consider the negotiability of this dispute in the abstract. We express no opinion about the contractual merits of the grievance or any contractual defenses the Judiciary may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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

[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]

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Judiciary argues that its decisions regarding Team Leader staffing levels and work assignments are not arbitrable because they concern a non-negotiable managerial prerogative to

determine policy.^{3/} It notes that the employer's prerogative to determine staffing levels includes the non-negotiable right to determine whether to fill vacancies.^{4/}

The Judiciary states that along with reallocation amongst the nine judges, it assigned its Team Leaders the tasks of supervising the judges' clerical or probationary personnel in order to emphasize the supervisory functions of the Team Leader position. It asserts that such tasks are within the purview of the CSS2 job description, and that it has a managerial prerogative to assign job duties related to employees' normal job functions. The Judiciary cites City of Newark v. JNESCO District Council 1, P.E.R.C. No. 2011-86, 38 NJPER 65 (¶11 2011), among other Commission decisions, to support its argument that it has a non-negotiable managerial prerogative to assign new, additional, or changed work duties if they are incidental to or within the purview of the job description.

PANJ argues that its grievance is not challenging the Judiciary's setting of staffing levels or related work assignments, but rather is challenging alleged violations of the

^{3/} The Judiciary cites State of New Jersey Judiciary, P.E.R.C. No. 2011-38, 36 NJPER 417 (¶161 2010), and City of Linden, P.E.R.C. No. 95-18, 20 NJPER 380 (¶25192 1994), to support its argument regarding non-negotiability of staffing levels.

^{4/} The Judiciary cites State of New Jersey, P.E.R.C. No. 2008-37, 33 NJPER 335 (¶125 2007), and Paterson PBA No. 1 v. Paterson, 87 N.J. 78 (1981), to support this statement.

CNA that resulted from the staffing issues. Specifically, it asserts violations of: Article 1.2, Unit Composition; Article 2.1, Respect and Dignity; Article 2.4, Rules; Article 5.1B., Hours of Work; Article 5.1C.2.b., Hours of Work; and the December 28, 1994 Side Letter Agreement between the parties.^{5/} It alleges that the issues of hours of work, safety, and discipline, among others implicated by the changed staffing levels, are severable from the Judiciary's managerial prerogatives and thus arbitrable.

The Judiciary responds that there have been no changes made to the Team Leaders' hours of work. It argues that PANJ's alleged contractual violations are unsubstantiated and essentially boil down to a complaint that Team Leaders are being asked to do more or different types of tasks than previously assigned, which is a non-negotiable managerial prerogative.

A public employer has a managerial prerogative to determine when governmental services will be delivered and the staffing levels associated with the delivery of those services. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). The employer's interest in setting staffing levels outweighs the employees' interest in not having to work harder because of alleged inadequate staffing. Old Bridge Bd. of Ed., P.E.R.C. No.

^{5/} These violations were alleged in the grievance and in the brief. The brief asserted additional violations of: Article 9.8, Team Leaders and Supervising Probation Officer Positions; and Article 25, Health and Safety.

2003-79, 29 NJPER 228 (¶70 2003) (union alleged that inadequate staffing of high school attendance office resulted in excessive work load for current employees). Therefore, the remedy originally sought by PANJ in its grievance to "Revert to the prior staffing ratio" is a non-negotiable issue.

Furthermore, a public employer has a managerial prerogative to assign employees' job duties related to their normal job functions. See In re Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983) (energy management control technicians assigned electrical work); In re City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983) (firefighters assigned to close fire hydrants and respond to civil emergencies); In re Mercer County Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980) (park police assigned to check oil and change flat tires on their police cars). In the instant case, the Judiciary reallocated Team Leaders' work to compensate for decreased staff, including placing an emphasis on supervisory duties. PANJ does not contest the nature of the work assignments or dispute that they are within the purview of the CSS2 job description. Accordingly, the Judiciary's staffing reallocation and assignment of different tasks fall within its managerial prerogative to assign unit employees job duties related to their normal job functions and is not negotiable. This conclusion addresses PANJ's workload and assignment-related contract violation claims

regarding unit composition, respect and dignity, rules, and the side letter agreement.

However, the exercise of managerial prerogatives often affect terms and conditions of employment that are severable from the policy decision and are thus subject to negotiations and arbitration. See Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382, 385-386 (App. Div. 1985). We have held that disputes over increased work hours as a result of changes in assigned tasks would not significantly interfere with managerial prerogative and are thus mandatorily negotiable. See Fairfield Tp. Bd. of Ed., P.E.R.C. No. 98-32, 23 NJPER 541 (¶28268 1997); City of Newark v. JNESCO District Council 1, P.E.R.C. No. 2011-86, 38 NJPER 65 (¶11 2011).

In the instant case, the Judiciary has not increased work hours for Team Leaders, and PANJ has not alleged that the employer ever required or requested that Team Leaders work additional time due to the additional assignments. The grievance alleged that Team Leaders "find that their duties cannot be completed on time. A few have worked past 6:00 p.m. on some days." However, PANJ's brief states:

The employees working 35 hours a week are consistently working beyond 35 hours each week and are working through their lunch hour. Regardless of whether management is requesting or requiring PANJ members to do this, working beyond the contractually

allotted workweek and working through lunch is necessary in order to perform the job duties presently associated with the Team Leader job. [emphasis added]

Although PANJ claims that some employees are working additional hours, there is no allegation that the Judiciary has requested or required such work, and it is apparently the Team Leaders - not management - who have independently determined that it is "necessary" to work more hours to complete assignments.

Accordingly, there is no allegation that the Team Leaders have had to work longer, so there is no severable claim for work hours or related compensation claims.

Next, we have also permitted arbitration over severable employee safety issues. See In re New Jersey State Judiciary, P.E.R.C. No. 2008-39, 34 NJPER 4 (¶2 2008). However, PANJ's alleged safety issues as a result of staffing changes are predicated on the claim that Team Leaders' work hours are longer, thus subjecting them to more dangerous situations. The brief states:

While employees are no longer allowed to work past 4:30 p.m., the grievants are coming in before 8:30 a.m. when the area is more desolate, thus posing a danger to the health and safety of these employees.

Again, there is no allegation that the Judiciary has required any change in work hours or schedules to cause such changes in morning arrival times that might impact on employees' safety. Thus, there is no severable safety claim.

PANJ's alleged disciplinary issue (based on the CNA's Team Leader disciplinary clause, Article 9.8) in relation to the Judiciary's staffing and assignment decisions is not a dispute that is ripe for consideration in this forum. Their brief states:

Article 9.8 is also implicated in the grievance. At the arbitration hearing, witnesses are prepared to proffer testimony about their fear of being subjected to a 9.8 action for their inability to perform job duties because of their overwhelming workload.

There is no allegation that any of the Team Leaders have actually been subject to any disciplinary action due to difficulty performing new assignments or work in a timely manner. A general prospective fear of such consequences does not support a finding that there has been any change in or dispute regarding application of Article 9.8. If the Judiciary removes a Team Leader and PANJ believes that the contractual removal procedures outlined in Article 9.8 were violated, then PANJ can resort to the parties' negotiated grievance procedure at that time.

Finally, PANJ's retaliation claim is not an issue for consideration in a scope of negotiations petition.^{6/} PANJ may pursue such claim as an unfair practice charge.

^{6/} PANJ alleges that changing work assignments is a form of retaliation by the Judiciary for the union's successful settlement of a previous grievance regarding Senior Probation Officers performing Team Leader duties.

ORDER

The request of the State of New Jersey Judiciary for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Voos voted against this decision. Commissioner Jones was not present.

ISSUED: June 27, 2013

Trenton, New Jersey