

P.E.R.C. NO. 2013-91

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY  
(MONMOUTH VICINAGE),

Petitioner,

-and-

Docket No. SN-2012-054

PROBATION ASSOCIATION OF NEW JERSEY  
(PROFESSIONAL SUPERVISORS UNION),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey State Judiciary (Monmouth 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 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 (Steven Livingston, on the  
brief)

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

DECISION

On March 21, 2012, the New Jersey State Judiciary (Monmouth 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 allegedly implementing a "Pilot Program" whereby Senior Probation Officers are performing the duties of Team Leaders (official title "Court Services Supervisor 2", or CSS2) in the Criminal Division.

The parties have filed briefs and exhibits. The Judiciary submitted the certification of Terry Mapson-Steed, 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.

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.

In the Criminal Division of the Judiciary's Monmouth Vicinage, there have historically been enough Team Leaders such that there was always a staffing ratio of one Team Leader to one Judge. In or about November 2010, two Monmouth Vicinage Criminal Division Team Leaders were reassigned to the Family Division and Probation Division. Instead of replacing these two Criminal Division Team Leaders, the Judiciary chose to realign the remaining Team Leaders amongst the judges such that several of them were now assigned to two judges. Additionally, the job duties of some Senior Probation Officers (SPOs) were realigned so

that some SPO staff were assigned work within the courtroom performing calendar case management functions.<sup>1/</sup>

On December 9, 2010, PANJ filed a grievance asserting that the Judiciary violated multiple provisions of the parties' CNA due to the alleged "Pilot Program where SPO are performing duties of CSSII/Team Leaders in Criminal Division." PANJ sought the following relief: "To cease and desist of this pilot program until this condition of employment is negotiated." On January 4, 2011, the Judiciary denied the grievance at Step 2. On January 12, 2011, PANJ pursued the grievance at Step 3, and a Step 3 hearing was scheduled for July 12, 2011.<sup>2/</sup> On November 10, 2011, the hearing officer denied the grievance at Step 3. On December 1, 2011, PANJ demanded arbitration. This petition ensued.

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).

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1/ Senior Probation Officers are in the non-supervisory PANJ Case-Related Professional Unit, which has a separate CNA from the Team Leaders' supervisors unit CNA.

2/ The hearing officer adjourned the July 12, 2011 hearing and instead held a conference call with the parties on July 27, 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.

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 work assignments are not arbitrable because they concern a non-negotiable managerial prerogative. The Judiciary states that along with reallocation amongst the 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.

The Judiciary further asserts that there have been no changes made to the Team Leaders' hours of work or compensation. It argues that PANJ's alleged contractual violations all stem from 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.

PANJ argues that its grievance does not challenge the Judiciary's assignment of job duties, but rather is challenging alleged violations of the CNA that resulted from the realignment of job duties. 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; Article 9.8, Team Leaders and Supervising Probation Officer Positions; Article 25, Health and Safety; a December 28, 1994 Side Letter Agreement; and Side Letter of

Agreement #1.<sup>3/</sup> PANJ also incorporates an earlier legal argument asserting that the issues of hours of work, safety, and discipline, among others implicated by the changed job duties, are severable from the Judiciary's managerial prerogatives and thus arbitrable.<sup>4/</sup>

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

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<sup>3/</sup> Additional violations asserted in PANJ's brief are: "retaliation for the outcome of a separate grievance"; and "the lack of unified court procedures."

<sup>4/</sup> In addition to its respondent's brief, filed on June 29, 2012, PANJ "incorporates by reference all of the factual and legal arguments advanced" in a June 15, 2012 brief it filed in a different scope of negotiations case (SN-2012-051) which involved the Judiciary's Camden Vicinage.

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 agreements.

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. 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 related to changed job duties are predicated on the claim that Team Leaders' work hours are longer. As noted above, there is no allegation that the Judiciary has required any change in work hours or schedules. Therefore, there has been no change in arrival or departure times that might impact employee safety, and there is no severable safety claim.

PANJ's allegation of a violation of Article 9.8 (the CNA's Team Leader disciplinary clause) in relation to the Judiciary's job duty decisions fails to state a dispute. PANJ has alleged, in its incorporated brief, only a vague "fear of being subjected to a 9.8 action." PANJ has not alleged 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, or 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' grievance procedure at that time.

To the extent that PANJ's grievance challenges the use of SPOs to perform some Team Leader duties, and implicates any negotiable issues between the SPOs and Judiciary due to such realignment of duties, the SPOs involved (and the PANJ Case-Related Professional Unit) would have to file a grievance under their own CNA that names themselves as the grievants.

Finally, PANJ's retaliation claim is not an issue for consideration in a scope of negotiations petition.<sup>5/</sup> PANJ may pursue such claim as an unfair practice charge.

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

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<sup>5/</sup> PANJ alleges that changing job duties is the Judiciary's retaliation for previous grievances by SPOs performing Team Leader duties which resulted in a successful arbitration award of out-of-title pay, and a successful settlement.