

P.E.R.C. NO. 2017-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC, PREAKNESS
HEALTH CARE CENTER,

Petitioner,

-and-

Docket No. SN-2017-018

AFSCME COUNCIL 52, LOCAL 2273,
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the County's request for a restraint of binding arbitration of a grievance contesting alleged changes to existing job descriptions. Finding that the assignment of additional duties unrelated to an employee's job description/classification is mandatorily negotiable, the Commission declines to restrain arbitration over the addition of dining room duties to those job titles whose duties are purely clerical and do not include contact with residents. Conversely, finding that the assignment of additional duties incidental to the regular duties of a job title are not mandatorily negotiable, the Commission restrains arbitration over the addition of dining room duties to those job titles whose regular duties include contact with residents.

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, Genova Burns, attorneys (Jennifer Roselle, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel and on the brief; Marissa A. McAleer, on the brief)

DECISION

On October 21, 2016, the County of Passaic, Preakness Healthcare Center (Preakness or the County) petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 52, Local 2273, AFL-CIO (AFSCME) that alleges that the County has made changes to existing job descriptions.

The County has filed a brief, exhibits, and a certification and supplemental certification of the Executive Director of

Preakness, Lucinda Corrado. AFSCME has filed a brief, exhibits, and the certification of its President, Lakisha Hamm.^{1/}

AFSCME represents any person holding a position by appointment or contract or employment at Preakness, as well as probationary and part-time employees. The County and AFSCME are parties to a collective negotiations agreement (Agreement) with a term of July 1, 2012 through June 30, 2016. The grievance procedure ends in binding arbitration.

Article XX, "Classification Review," subsection 20.2 of the Agreement states, in pertinent part:

If, during the term of this Agreement, circumstances require that changes be made in existing job descriptions and/or classifications, the parties agree that they will negotiate with a view at arriving at a mutually acceptable determination prior to such change being made effective. Should the parties fail to agree, the matter will be referred under the grievance procedures hereinabove set forth or may be referred to the Civil Service Department in accordance with its Statutes and Regulations with no reductions in pay at any time. . . .^{2/}

Preakness's Executive Director certifies as follows. Beginning in November 2016, State regulations required the facility to move to resident-centered care, which involves creating a home-like environment for residents and more focus on

^{2/} In the grievances AFSCME filed relating to this matter, it also asserts violations of Articles II (Preamble), V (Management Rights), VIII (Overtime) and XIV (Promotional Procedure). AFSCME has not addressed these provisions in its submissions.

individual needs and socialization. One of the goals with regard to socialization was to increase attendance for mealtime in the main dining room of the facility. The lunch period for residents is generally limited to approximately 40 to 60 minutes.

Employees assist in bringing residents to the dining room and helping them select their meals. Residents complete a ticket to select their meal options. For residents that can complete the ticket independently, the staff collects the ticket and brings it to the service counter. The food is plated by dietary staff, and staff then returns the plated food to the resident. For residents who are unable to complete the ticket independently, the same process takes place except the staff also assists with filling out the ticket, removing food from the trays, opening any unpackaged items, and ensuring that the resident does not need additional food or other assistance.

Historically, recreational aides have provided assistance in the dining room, while various covered titles from the bargaining unit have also assisted in the dining room on a voluntary basis. As eating in the dining room became more popular, additional support in the dining room became necessary. In May 2016, employees began being assigned to assist in the dining room during normal lunch periods, approximately one time every six to eight weeks. The assignment is done via a prepared schedule, however the schedule is flexible and the employees may swap

assignments.

Only nursing staff are required to physically feed the residents. Other staff members are not required to feed residents but may do so on a voluntary basis. The lunch duty does not extend the employee's work day or deprive employees of break time. The lunch duty replaces a duty the employee would have otherwise performed that day.

Hamm opposes Corrado's certification to the extent it asserts that bargaining unit employees have historically done dining room duties on a voluntary basis. Hamm certifies that on occasion, bargaining unit employees would help push residents into the dining room but never performed the full scope of duties they are being asked to perform now. Hamm also opposes Corrado's certification to the extent it states that bargaining unit members are not mandated to feed residents. Hamm certifies that employees are now instructed to feed residents if they need assistance and there are no nursing staff available to do so. Hamm also disputes Corrado's certification to the extent it states that lunch duty replaces a duty the employee would have otherwise performed that day. Hamm certifies that the performance of the dining room duties causes employees to fall behind in their regular job duties.

The bargaining unit titles that have been assigned to dining room duties are Institutional Attendant, Hospital Attendant,

Recreation Therapy Aide, Social Worker-Aging, Clinic Attendant, Keyboard Clerk, Accountant Clerk, Nursing Service Clerk, Secretarial Assistant, and Recreation Therapist. The record includes the Civil Service Commission job descriptions for these titles.

Some of the job descriptions for the disputed job titles contain examples of work that explicitly include escorting residents and/or providing meal assistance. These titles and examples of work are as follows:

- Institutional Attendant includes: "[e]scorts . . . patients to . . . meals. . . ." and "[a]ssists in the serving of meals."
- Hospital Attendant includes: "[t]ransports patients to treatment units or assists them in walking" and "[s]erves food trays and feeds patients requiring help."
- Clinic Attendant includes: "[e]scorts patients or arranges for escort to assigned activities. . . ." and also performs basic medical assessments for the patients.

Other job descriptions for the disputed job titles, while not specifically mentioning escorting residents or providing meal assistance, envision direct one-on-one care for and contact with the residents. These titles and examples of work are as follows:

- Recreation Aide includes: "[a]ssists in the curriculum planning, organization, promotion and implementation of recreational programs and activities," "[h]elps organize and lead groups in various activities", "[h]elps promote recreation programs of all types" and "[h]elps set up and clean activity area to ensure it is neat and free of health and safety hazards";

- Social Worker-Aging includes: “[i]nterviews clients . . . to obtain information about an immediate problem and the client’s resources and ability to deal with the problem,” and [a]ssists the client in obtaining needed services”;
- Recreation Therapist includes: “determines patient’s/resident’s interests, attitudes, needs and abilities through interview and observation”; “[p]lans therapeutic programs taking into consideration the emotional and physical conditions and abilities of patients/residents,” and “[a]dministers professional procedures, and teaches and guides patients/residents in utilizing various therapeutic activities.”

Still other job descriptions for the disputed job titles are purely clerical in nature, do not mention escorting residents or providing meal assistance, and do not envision direct one-on-one care for and contact with the residents. These job titles are Secretarial Assistant, Nursing Services Clerk, Keyboarding Clerk 1, and Account Clerk.

On May 4, 2016, AFSME filed grievances relating to the assignment of dining room duties to the disputed job titles and seeking “to be made whole” as a remedy. The grievances were denied, and this petition ensued.

The Board argues that dining room duties are directly related to the services provided by a licensed nursing home. It also asserts that Article XX, subsection 20.2 is unlawful and must be struck from the Agreement. AFSCME responds that dining room duties involve new duties that are not related to regular job duties and that Article XX, subsection 20.2 is lawful.

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 the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

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).

Generally, the assignment of duties unrelated to an employee's job description/classification is mandatorily negotiable. In re Byram Tp. Bd. of Ed. and Byram Tp. Ed. Ass'n, 152 N.J. Super. 12, 25 (App. Div. 1977). In that case, the court held that a proposal that teachers not be required to perform certain non-teaching duties such as custodial functions (e.g., moving classroom equipment, furniture or supplies, cleaning Venetian blinds) was mandatorily negotiable, and conversely, that a proposal that would preclude the assignment of supervisory tasks to teachers during their duty-free lunch period and related to student safety and control was not mandatorily negotiable. See also Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987) (finding that making copies of department-wide examinations without additional compensation were duties incidental to the teacher's primary objective of test development and therefore not mandatorily negotiable).

Outside of the educational context, in Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996), we found the issue of whether the Authority could assign painting duties to Liquid Treatment Plant (LTP) employees was mandatorily negotiable because while the painting of equipment is

necessary maintenance, it is not necessarily a duty incidental to LTP employees' regular responsibilities as set forth in the job description.

Under all of the circumstances of this case, we find that the disputed job titles demand different results applying the case law described above. For the job titles whose job descriptions explicitly state that the employee will escort residents and/or provide meal assistance (Institutional Attendant, Hospital Attendant and Clinic Attendant), dining room duties are part of their regular job duties and therefore do not trigger a negotiations obligation.

For the disputed job titles whose job descriptions require direct one-on-one contact between the employee and the residents and center around the care and safety of the residents (Recreational Aide, Social Worker, Aging, and Recreational Therapist), dining room duties are incidental to their regular duties and also do not trigger a negotiations obligation. Importantly, there is no dispute that the employees are only required to provide meal assistance for residents once every six to eight weeks and that these additional duties do not add to the length of the regular work day or reduce break time.

However, for the job titles whose duties are purely clerical and envision no relationship and/or contact between the employee and residents (Secretarial Assistant, Nursing Services Clerk,

Keyboard Clerk, and Accountant Clerk), dining room duties are not related or incidental to their regular duties and therefore do trigger a negotiations obligation.

The remaining issue is the negotiability of Article XX, subsection 20.2. Article 20.2 sets out that the parties must "negotiate with a view of arriving at a mutually acceptable determination" prior to changes to existing job descriptions and/or classifications. Employees may seek to negotiate for contractual protections against being required to assume job duties outside their job titles and normal duties. 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). Inasmuch as Article XX, subsection 20.2 does just that, but does not require the County to negotiate over the assignment of duties incidental to or comprehended within the employee's job description and normal duties or necessary to respond to emergencies, we find the provision to be enforceable.

ORDER

The request of the County of Passaic, Preakness Healthcare Center for a restraint of binding arbitration is granted with regard to the addition of dining room duties for Institutional Attendant, Hospital Attendant, Clinic Attendant, Recreational Aide, Social Worker-Aging, and Recreational Therapist. The request is denied with regard to the addition of dining room

duties for Secretarial Assistant, Nursing Services Clerk,
Keyboard Clerk, and Account Clerk.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Voos and Wall
voted in favor of this decision. Commissioner Jones voted
against this decision.

ISSUED: February 23, 2017

Trenton, New Jersey