

P.E.R.C. NO. 2019-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY VOCATIONAL
TECHNICAL SCHOOL,

Petitioner,

-and-

Docket No. SN-2019-007

OCEAN COUNTY VOCATIONAL
TECHNICAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Ocean County Vocational Technical School for a restraint of binding arbitration of a grievance filed by the Ocean County Vocational Technical Education Association. The grievance seeks compensation for a secretary's duties associated with a breakfast program implemented by the school. The Commission holds that the issue of additional compensation for the secretary's breakfast program duties is mandatorily negotiable.

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, Cleary Giacobbe Alfieri Jacobs,
LLC, attorneys (Bruce W. Padula, on the brief; Nicholas
DelGaudio, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Samuel Wenocur, of counsel and on the brief)

DECISION

On July 19, 2018, the Ocean County Vocational Technical School (County) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Ocean County Vocational Technical Education Association (Association). The grievance alleges that the County violated the terms of the parties' collective negotiations agreement (CNA) and past practice when it increased the workload of the grievant by assigning her duties related to the County's implementation of a new breakfast program without additional compensation.

The County filed briefs, exhibits, and the certification of the School Business Administrator and Board Secretary, Frank Frazee. The Association filed a brief, exhibits, and the certifications of the grievant and of its grievance chair, Andrew Dennison. These facts appear.

The Association represents all certified teaching personnel and full-time secretaries under contract as well as the operational staff consisting of custodians, groundskeepers, and maintenance personnel employed by the County, excluding administration, supervisors, and others. The County and the Association are parties to a CNA with a term of July 1, 2016 through June 30, 2019. Article 12 (A) (2) of the CNA states, as follows:

Schedule G, attached hereto and made a part hereof, indicates the activity and extracurricular positions that shall be established and the applicable stipend. . . . The stipend shall not be paid if the activity is assigned as part of a staff member's regular work assignment. The Board has a managerial prerogative to create any stipend position, but shall negotiate compensation for that position with the majority representative."

The grievance procedure ends in binding arbitration.

The grievant is employed by the County as the Secretary to the Principal at the Waretown Center for the School's Academy of Law and Public Safety program (ALPS). Her work schedule is Monday through Friday, 7:30 a.m. to 3:00 p.m. According to the

grievant's job description, the "Secretary to the Principal" performs routine and complex secretarial duties. Those job duties include, but are not limited to, assisting the principal in the preparation of Federal, State, and County reports, budget compilations and other administrative tasks; receiving visitors, handling telephone calls, scheduling appointments, arranging meetings, and communicating with students, staff and the community; utilizing a computer including using spreadsheets, word processing, district attendance software, and student-based software programs; maintaining all correspondence, personnel files, field trips, and staff professional development paperwork; and other duties and/or responsibilities which may be assigned by the principal as needed.

According to Frazee, during the 2017-2018 school year, the grievant received an assignment related to the implementation of a breakfast program for the County. Frazee certifies that the duties that the grievant performs related to this breakfast program include keeping track of the roster of students receiving breakfast via computer spreadsheet, receiving and depositing the money received for the breakfast program, and completing a production report as to what breakfast foods have been given out. Frazee further certifies that the grievant performs the duties related to the breakfast program during her regularly-scheduled hours.

Dennison certifies that beginning in the 2017-2018 school year, ALPS was the only County school to implement a breakfast program. Thus, the parties did not negotiate over the breakfast program in the present CNA as they had done with a comparable lunch program. In February 2018, the County implemented Policy 8507 - "Breakfast Offer Versus Serve." Policy 8507 was the first County policy approving or otherwise concerning a student breakfast program.

According to the grievant, during the 2017-2018 school year, she was also responsible for the administration of free student breakfast to a group of students enrolled in the County's fire academy, which is at a different location from her usual work location at ALPS. In February 2018, the grievant certifies that she was given the additional task of handing out the breakfasts to the students at ALPS. For this new task, she arrived at ALPS by 7:15 a.m. and reported to the kitchen. The grievant further certifies that this new task was reassigned to the Chef once it became evident that duty was keeping her away from her desk too long.^{1/}

For many years, including the 2017-2018 and 2018-2019 school years, several County schools, including ALPS, have operated student lunch programs. Each school with a student lunch program

^{1/} The record does not reflect how long the grievant had to arrive early to ALPS to perform this task before it was reassigned to the Chef.

has a designated lunch coordinator who receives a \$1,000 stipend in accordance with Article 12(A)(2) and Schedule G of the CNA. The County employees assigned as lunch coordinators are not always principal secretaries, and have included titles such as attendance secretary and school nurse.

The grievant certifies that during the 2016-2017 school year, the County assigned her lunch duties at ALPS without offering any additional compensation, which she grieved. The County and Association settled the grievance regarding her lunch duties and provided her with a \$1,000 stipend.^{2/} She also received this stipend for the 2017-2018 and 2018-2019 school year. According to the grievant, her duties with the ALPS breakfast program significantly overlap with her lunch coordinator duties, including logistical and administrative matters for both programs. The grievant certifies that she actually performed more duties associated with the breakfast program than with the lunch program, which she detailed in a June 24, 2018 email to Dennison.

On March 15, 2018, the grievant emailed the school about her lack of compensation for the increased workload resulting from the breakfast program. By email dated March 19, Frazee responded and stated, "the District has the managerial prerogative to

^{2/} The parties have not provided any settlement agreement for this grievance.

assign reasonable duties to employees within the scope of their title and general responsibilities assigned by the District."

The Association filed letters dated April 16 and May 5, 2018 to the superintendent of the school, as level 3 and level 4 of the grievance procedure. On June 25, the Association filed a request for submission to a panel of arbitrators. This petition ensued.

The County argues that the grievant's breakfast duties are secretarial in nature, and to the extent they are not, then those duties are incidental or comprehended within the grievant's job description; thus, the assignment of such duties is a managerial prerogative. Additionally, the County asserts that the grievant's workload has not increased since her work hours have remained the same. Moreover, the County argues that the payment of the \$1,000 stipend, pursuant to the CNA, for the grievant's work related to the lunch program is irrelevant and was a non-prejudicial settlement of a prior grievance. Further, the County cites language from the CNA that disqualifies an employee from being paid the \$1,000 stipend if the duties are part of employee's "regular work assignment," which the County claims is the case with the grievant's breakfast duties.

The Association argues that the grievant's duties are not secretarial in nature and that her workload has increased as a result. In support, the Association argues that the grievant's job description does not mention anything associated with the

breakfast program. Moreover, the Association argues that the grievant was paid a \$1,000 stipend for her duties associated with the lunch program, which is less work than her breakfast duties.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978).

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).

We must decide whether the County had a managerial prerogative to assign breakfast duties to the grievant. A public employer has a managerial prerogative to assign new duties if they are incidental to or comprehended within an employee's job description and normal duties. New Jersey Highway Auth. and IFPTE Local 193 (Toll Supervisors of America), AFL-CIO, P.E.R.C. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd, 29 NJPER 276 (¶82 App. Div. 2003); see also Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987) (holding that employees may be required to perform minor tasks incidental to their primary duties). However, if new duties are considered outside the scope of the grievant's primary duties, they are mandatorily negotiable. See Roselle Park Bd. of Ed., P.E.R.C. No. 2013-55, 39 NJPER 307 (¶105 2013) (holding that assignment of lunch duties to teachers was mandatorily negotiable and denying Board's request for restraint of arbitration).

The grievant's job description includes performance of "routine and complex secretarial duties," including but not limited to, assisting the principal "in the preparation of Federal, State, and County reports, budget compilations, and other administrative tasks." Here, it appears that many of the grievant's duties related to the breakfast program are administrative in nature, such as using spreadsheets to track

student eligibility for breakfast, purchase orders, money collection, and various other reports.

However, while the County asserts that the grievant's work hours have not been increased, the grievant alleges that for some period of time beginning in February 2018, she was required to arrive fifteen minutes prior to the beginning of her work shift to hand out breakfasts to the students. The grievant was also responsible for the administration of free student breakfast to a group of students enrolled in the County's fire academy, which is at a different location from her usual work location at ALPS. Even a minor increase in workload that could result in small amounts of compensation could trigger mandatory negotiability. See Hunterdon Cty., supra, 116 N.J. at 322, ("[o]ur courts have upheld findings by PERC that modest amounts of compensation, or even seemingly minor non-economic benefits, can sufficiently affect the work and welfare of employees to trigger mandatory negotiability.")

Additionally, the County paid the grievant the CNA's \$1,000 stipend for her duties related to the lunch program. While the resolution of the prior grievance regarding the stipend for the lunch program is not dispositive of the present matter, Schedule G identifies the lunch coordinator position as an "extracurricular activity" for which a stipend is paid. The record reflects that there is overlap between the grievant's

breakfast and lunch duties, and the grievant certifies that she has more duties associated with the breakfast program than the lunch program.

The grievant has an interest in understanding what kind and amount of work will be performed relative to her compensation that was negotiated at the time she was hired. The County has an interest in being able to assign duties in order to provide the myriad of services government must deliver. On balance, under the facts of this case, we find the grievance to be mandatorily negotiable and legally arbitrable. We discern no significant interference with governmental policy arising from the Association seeking compensation for grievant's breakfast duties. Id. at 331- 332; see also Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-8 (1973). The Board's contractual defenses including the contention that the breakfast duties do not fall within the "extracurricular activities" contemplated by Article 12(2) is outside of our scope of negotiations jurisdiction and may be raised to the arbitrator. Ridgefield Park, supra.

ORDER

The request of the Ocean County Vocational Technical School for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Boudreau, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni was not present.

ISSUED: February 28, 2019

Trenton, New Jersey