

P.E.R.C. NO. 2020-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY/
HUDSON VICINAGE,

Petitioner,

-and-

Docket No. SN-2019-065

PROBATION ASSOCIATION OF NEW JERSEY
(CASE-RELATED UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Judiciary's request for a restraint of binding arbitration of the Association's grievance alleging violation of the parties' CNA when the Judiciary determined the grievant was ineligible for promotion because she did not possess a valid driver's license. The Commission finds that the Judiciary had a non-negotiable managerial prerogative to determine the qualifications for the position and establish that a valid driver's license is required to qualify for the promotional positions.

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, Meryl G. Nadler, Administrative
Office of the Courts (V. Nicole Langfitt, of counsel;
Susanna J. Morris, on the brief)

For the Respondent, Law Offices of Daniel J. Zirrith,
LLC, attorneys (Edward H. Kerwin, of counsel and on the
brief)

DECISION

On May 1, 2019, the State of New Jersey Judiciary/Hudson Vicinage (Judiciary) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Probation Association of New Jersey, Case-Related Professional Unit (Association). The grievance alleges that the Judiciary violated the parties' collective negotiations agreement (CNA) when it determined the grievant was ineligible for advancement to the position of Senior Probation Officer (SPO) because she did not possess a valid driver's license.

The Judiciary filed briefs, exhibits, and the certifications of its Vicinage Chief Probation Officer (CPO), Chief of Placement (COP), Classification and Leave Administration Units, and Administrative Supervisor 3. The Association filed a brief, exhibits, and the certification of the grievant.^{1/} These facts appear.

The Association represents all non-supervisory, case-related professional employees employed by the New Jersey State Judiciary, in all trial court operations (from the courtroom to probation to case management) who have caseload responsibilities. The Judiciary and Association are parties to a CNA with a term of July 1, 2016 through June 30, 2020. The Association's grievance alleges violation of Articles 2 ("Labor-Management Relations"), 7 ("Salary and Wages"), 10 ("Grievance Procedure"), 12 ("Management Rights"), 22 ("Work Assignments"), and 27 ("Maintenance and Terms and Conditions of Employment"), of the parties' CNA. The grievance procedure ends in binding arbitration.

The grievant certifies that she is a Parole Officer (PO) in the Pretrial Intervention, Adult Supervision Unit (ASU). She previously served as an investigator (with thirty years experience) in the Child Support Unit (CSU) and was promoted to PO in 2013.

^{1/} We note that the grievant's certification was not signed. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certification(s) based upon personal knowledge.

The grievant certifies that during the hiring process for the PO position in 2013 there was no discussion about her not possessing a driver's license. The grievant further certifies that she is able to perform her current duties without a driver's license and that she received positive performance reviews from her supervisor during her fifteen years in the CSU.

The grievant asserts she was denied the chance to interview for an SPO position in the CSU solely because she does not possess a driver's license. The grievant certifies that she met the minimum requirements for the SPO position because SPOs in the CSU are not required to do field work requiring a driver's license.

The Judiciary's CPO certifies that she supervises 131 employees, of which 58 are SPOs and 17 are POs. The Hudson Vicinage Probation Division (Division) consists of the ASU, the Juvenile Supervision Unit (JSU), and the CSU. The CPO certifies that both SPOs and POs are required to possess a valid driver's license. Specifically, the Probation Officer track job band states, "Appointees will be required to possess a driver's license valid in New Jersey only if the operation of a vehicle is necessary to perform essential duties of the position." SPOs and POs assigned to the ASU or JSU must do field work which requires driving vehicles for home visits and attending court, among other travel requirements. The CPO further certifies that SPOs and POs

assigned to the CSU are required to monitor and enforce support orders, and while these employees do not normally do field work, they are also required to possess a valid driver's license. SPOs and POs are assigned to each of these three units, and must be able to work in any of the units. The CPO asserts that if some employees had driver's licenses and others did not, her ability to make appropriate assignments would be significantly hampered.

The CPO further certifies that on January 29, 2019, the Hudson Vicinage posted internally for five SPO positions. The posting clearly stated that the duties of the SPO positions includes regular field work requiring a driver's license.

The Administrative Supervisor certifies that in 2017, the grievant was reassigned by the Probation Division from the CSU to the ASU, which performs more field work. Shortly after the assignment, the grievant advised that she did not possess a driver's license and was therefore unable to do field work. The Administrative Supervisor certifies that as a result of the grievant's disclosure, the Division did a review of the 2013 recruitment file for the grievant's PO position, which revealed that the grievant was erroneously deemed qualified for the position.

The Administrative Supervisor further certifies that the Judiciary decided that since the grievant had already been serving as a PO for four years at the time of the disclosure, the

grievant would be permitted to continue in the position rather than removing her. The Administrative Supervisor asserts that the Judiciary acknowledged that the grievant was mistakenly qualified for the PO position in 2013, but it could not knowingly qualify applicants for future positions if they did not meet the minimum requirements set forth in the notice of vacancy, which includes possessing a valid driver's license.

On June 21, 2018, the Association filed a grievance alleging that the grievant was denied a promotion, despite over 30 years of qualifying experience, based solely on her not possessing a driver's license, which is not necessary to perform the essential duties of the SPO position to which she applied. The grievance seeks the opportunity to be interviewed for the SPO position in the CSU. The grievance was denied at all steps of the CNA's grievance procedure. The Association moved to have the matter submitted to arbitration. 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 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).

The Judiciary, citing several Commission decisions, argues that arbitration should be restrained because it has the non-negotiable, managerial prerogative to determine job qualifications and to fill the SPO positions with the most qualified applicants. The Judiciary asserts that a valid

driver's license is necessary for all PO and SPO positions so that employees may be assigned to the various units responsible for field work as needed. The Judiciary argues that the grievant's lack of a driver's license would significantly interfere with its managerial prerogative to make such assignments.

The Association argues that arbitration should not be restrained because the grievance does not challenge the Judiciary's managerial prerogative to determine job qualifications such as possessing a valid driver's license. Rather, the Association is seeking to have the grievant's qualifications reviewed for the SPO positions that do not require a driver's license, where her years of experience performing the essential duties of a PO demonstrates a driver's license is not necessary. The Association further asserts that the job band description acknowledges that a driver's license is not always necessary to perform the essential duties of an SPO or PO.

The Commission has consistently held that public employers have a managerial prerogative to assign unit employees job duties related to their normal job functions and to determine the qualifications required for a job. Madison Bor., P.E.R.C. No. 2016-68, 42 NJPER 497 (¶138 2016); Madison Bor., P.E.R.C. No. 2012-30, 38 NJPER 255 (¶86 2011); City of Newark, P.E.R.C. No. 2011-86, 38 NJPER 65 (¶11 2011). Included in that prerogative is

the determination as to whether a particular license is required or desirable for a position. Livingston Tp., P.E.R.C. No. 2016-26, 42 NJPER 228 (¶64 2015); West Windsor-Plainsboro Bd. of Ed., P.E.R.C. No. 2000-26, 25 NJPER 436 (¶30191 1999); Camden Cty. Coll., P.E.R.C. No. 2017-7, 43 NJPER 77 (¶21 2016) (holding that to permit an arbitrator to determine whether a valid New Jersey driver's license is required for a particular title significantly interferes with the public employer's governmental policy interest).

Here, the Judiciary has established that a valid driver's license is required to qualify for all SPO and PO positions. The Judiciary has the managerial prerogative to assign SPOs and POs to those units responsible for field work as it deems necessary, and employees who do not possess a driver's license would significantly interfere with the Judiciary's ability to make such assignments. The grievant did not possess a valid driver's license, and thus, the Judiciary disqualified her application for promotion to the SPO position. Neither the Commission nor an arbitrator can second-guess the employer's determination as to whether an employee is qualified for a promotion. Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 2001-26, 27 NJPER 11 (¶32006 2000).

The fact that the grievant was erroneously appointed to her PO position in 2013 and was able to perform her duties without a

driver's license does not render legally arbitrable the Judiciary's managerial prerogative to require a driver's license for future vacancies. Nor does the fact that the Judiciary allowed the grievant to retain her PO position bind it to overlook the driver's license requirement for future vacancies.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: January 23, 2020

Trenton, New Jersey