

P.E.R.C. NO. 2022-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY BOARD OF  
SOCIAL SERVICES,

Petitioner,

-and-

Docket No. SN-2022-015

CWA LOCAL 1032,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of the CWA's grievance contesting the Board's distribution of job duties of the Human Service Specialist 3 (HSS3) title when it directed only the grievant to perform Medicaid fair hearing liaison work. Finding that the Medicaid fair hearing liaison duties are part of the grievant's normal job duties and included in the HSS3 job specification, the Commission holds that the Board has a managerial prerogative to determine it is more efficient to assign the Medicaid fair hearing duties to the grievant instead of evenly distributing them among all of its HSS3 employees.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, of counsel and on the brief; Christopher M. Kurek, on the brief)

For the Respondent, CWA Local 1032, (Daniel Suarez, Field Representative)

DECISION

On November 30, 2021, the Middlesex County Board of Social Services (Board) filed a scope of negotiations petition seeking to restrain binding arbitration of a grievance filed by CWA Local 1032 (CWA). The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) by failing to fairly distribute the workload and job duties of the Human Service Specialist 3 title (HSS3) when it unilaterally directed only the grievant to perform Medicaid fair hearing liaison work. The Board filed a brief, exhibits, and the certification of its

Chief of Personnel and Labor Relations, Joseph Jennings. The CWA did not file a response brief, exhibits, or a certification.<sup>1/</sup>

The CWA represents a unit of employees consisting of various clerk, building maintenance, data entry, human services specialists, and social service/social work titles employed by the Board. The Board and CWA are parties to a CNA effective from July 1, 2016 through June 30, 2020. The CNA's grievance procedure ends in binding arbitration.

Article VI - Compensation, Sections A and D provide:

A. When there are major additions to the workload which have to be done within time limits, Administration will not expect to have this accomplished within the normal work hours. Therefore, it shall be accomplished on overtime. Overtime will be offered to qualified employees according to seniority and rotated in order to equalize.

\* \* \*

D. Employees who work during periods of reduced staff (skeletal crew) shall earn compensatory time at the rate of time and one-half for all such hours worked. This shall be in addition to their regular pay.

Article XIV - Fair Practices, Section B provides:

The Board agrees to continue its policy of not discriminating against any employee covered by this Contract on the basis of race, creed, color, national origin, sex, marital status, age, armed forces obligations, sexual preference, political or religious opinions or affiliations, physical

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<sup>1/</sup> N.J.A.C. 19:13-3.6(f) requires that all briefs filed with the Commission shall recite all pertinent facts supported by certification(s) based upon personal knowledge.

handicaps, participation in Union activities,  
or language spoken.

The grievant is employed by the Board as a HSS3. Jennings certifies that the Civil Service Commission (CSC) job specification for the HSS3 title includes fair hearing liaison responsibilities within the description for scope of work. The HSS3 job specification includes the following example of work: "Prepares summaries of cases involved in hearings; acts in a liaison capacity between the agency, court system, and division with regard to hearing matters." The Board has determined that it is most efficient and in the best interest of its clients to have one person assigned to primarily handle Medicaid fair hearings. Due to the grievant's fair hearings liaison work, the Board has reassigned work for which he had been responsible to other employees when necessary.

The CWA filed a grievance alleging that the Board violated portions of Articles VI and XIV of the CNA by failing to fairly and evenly distribute Medicaid fair hearing liaison workload and job duties for the HSS3 title by, since approximately June 2016, unilaterally directing only the grievant to perform this job function. As a remedy, the grievance seeks that the Board evenly distribute the Medicaid fair hearing liaison work between all HSS3 employees, or that it reclassifies the grievant to reflect his additional Medicaid duties.

On July 1, 2021, the Board denied the CWA's Step 1 grievance. On July 29, following a Step 2 grievance hearing on July 21, the Board's Director denied the grievance, finding that the grievant has primary responsibility for Medicaid fair hearings and that his HSS3 title "is consistent with the duties and responsibilities of this assignment." On September 22, the Board's grievance committee denied the CWA's Step 3 grievance. On October 19, the CWA filed a request for binding 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 merits of the grievance or any contractual defenses the employer may have.

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 Board asserts arbitration must be restrained because it has the managerial prerogative to assign duties that are directly related to an employee's normal responsibilities. It argues that the grievant's Medicaid fair hearing liaison work is specifically covered in the CSC job specification for his HSS3 title. The Board asserts that when the grievant's responsibilities for fair hearings work impacts his ability to complete other work assignments, he has been granted relief by the Board assigning that work to other employees.

Public employees have an interest in not being required to perform duties outside their job description. See Bloomfield

Tp., P.E.R.C. No. 2005-36, 30 NJPER 470 (¶157 2005); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 110-112 (¶28054 1997).

Thus, public employee unions may negotiate for contractual protections against employees being required to assume duties outside their job titles and beyond their normal duties. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977) (teachers may not be required to move furniture and do other custodial tasks); New Jersey Highway Auth., P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd, 29 NJPER 276 (¶82 App. Div. 2003) (toll plaza supervisors assigned to cover breaks of toll collectors); Paterson State-Operated School Dist., P.E.R.C. No. 98-29, 23 NJPER 514 (¶28250 1997) (teacher may not be required to perform clerical tasks not incidental to teachers' normal assignments); and Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) and cases cited therein.

However, employers have a managerial prerogative to unilaterally assign duties if they are incidental to or comprehended within an employee's job description and normal duties. See, e.g., North Caldwell Bor., P.E.R.C. No. 2010-51, 36 NJPER 10 (¶4 2010) (police officers may be assigned to dispatcher duties); Town of Harrison, P.E.R.C. No. 2002-54, 28 NJPER 179 (¶33066 2002) (firefighters required to respond to both EMS and dispatch calls during a given shift); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire officers required to

perform crossing guard or patrol duties connected to fires); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (bus drivers required to pump gas); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982) (firefighters required to go on fire patrols); and Maplewood, supra.

Here, there is no dispute that the Medicaid fair hearing liaison duties to which the grievant is primarily assigned are directly related to and included within his normal job duties and within the CSC's job specification for the HSS3 title. The CWA has not contested those facts. The CWA's grievance contests the Board's decision to make the grievant the primary Medicaid fair hearing liaison and seeks instead that those duties be evenly distributed among its unit members employed by the Board. Jennings certified that the Board has determined that it is most efficient and in the interests of its client to have one person assigned (the grievant) to primarily handle Medicaid fair hearings. There is no assertion by the CWA that the grievant's work hours have increased as a result of his assignment. Based on the above-cited precedent, we find that the Board has a managerial prerogative to assign the Medicaid fair hearing duties to the grievant instead of evenly distributing those duties among all of its HSS3 employees. Accordingly, the CWA's grievance is not mandatorily negotiable or legally arbitrable.



ORDER

The request of the Middlesex County Board of Social Services for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: March 31, 2022

Trenton, New Jersey