

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2005-090

IUE/CWA LOCAL 81440,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Camden County College for a restraint of binding arbitration of a grievance filed by IUE/CWA Local 81440. The grievance contests the decision to expand the area patrolled by campus security officers to off-campus locations as part of a Downtown Crime Watch Initiative. The Commission concludes that a public employer has a managerial prerogative to determine the types of services it will provide and to assign employees duties if they are incidental to or comprehended within an employee's job description and normal duties. However, the Commission finds that despite these prerogatives, employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles and beyond their normal duties. The Commission holds that a grievance arbitrator can determine whether the parties' agreement contemplates current employees performing these duties under current employment conditions or whether the Union should have an opportunity to seek revision of the compensation/duties equation to account for the expanded duties.

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.

P.E.R.C. NO. 2006-21

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Respondent.

Appearances:

For the Petitioner, Taylor, Whalen & Hybbeneth,  
consultants (Garry M. Whalen, on the brief)

For the Respondent, Jennings Sigmond, P.C., attorneys  
(James Katz, on the brief)

DECISION

On June 15, 2005, Camden County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by IUE/CWA Local 81440. The grievance contests the decision to expand the area patrolled by campus security officers to off-campus locations as part of a Downtown Crime Watch Initiative.

The parties have filed briefs and exhibits. The College has submitted the certification of its vice-president for administration, Melissa Hopp. The Union has submitted the certification of its president, Kay O'Hanlon. These facts appear.

The union represents security officers. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

The College has three campuses: the main campus in Blackwood, a building in Cherry Hill, and a Camden campus that includes an old building and a new building located on Penn Street, across the street from each other. The new building has an attached garage. This grievance involves only the Camden campus.

Approximately ten security officers work three shifts at the Camden campus. At our request, the Union provided a copy of the job description for "Public Safety Officer." Their duties include, but are not limited to, crime prevention, protection of life and property, traffic control, investigation, enforcement of college policies and other duties as assigned. Their functions include patrolling assigned areas by vehicle, bicycle, walking, or other assigned modes of transportation.

Four officers are assigned the first shift, four the second shift, and two the third shift. Several of the officers are retirees; some are over the age of 70.

On February 7, 2005, the College's public safety supervisor issued a memorandum to all public safety personnel entitled

"Expanded Patrol Area - Downtown Crime Watch Initiative". It stated:

As part of our commitment to improving our service to the Camden Community, the Camden County College Public Safety Department has pledged to increase our patrol areas around the area of the Camden Campus.

We will act as "eyes and ears only." With the presence of an easily identifiable security officer, we hope to help deter crime and provide some comfort to the businesses and pedestrians in the area.

As part of our patrol "routine" we will make the following adjustments effective immediately:

- Foot Patrols, during day light hours only, will incorporate the expanded patrol area listed. Officers will wear a reflective security vest at all times on exterior foot patrols. Officers assigned to float in both buildings will alternate exterior patrols, attempting to walk the expanded patrol area (or a significant portion of the area) once per hour.
- Mobile Patrol will also incorporate the expanded patrol area. The officer assigned to mobile patrol will perform a minimum of one patrol per hour through the expanded patrol area. Officers will operate their vehicles with extreme caution being careful to observe all pedestrian traffic and traffic codes.

Officers are reminded that their purpose is to be an obvious deterrent for criminal activity. Should an officer observe suspicious or criminal activity, he/she is not to intervene. The officer will contact Camden Police Department/Rutgers University Police Department either via Nextel or through radio communication with the Camden

Campus. If safe to do so the officer should maintain a position to observe activities until police arrive.

The expanded area for security patrols will extend to:

7th Street behind the LEAP Academy  
7th Street to Market Street  
Market Street to 6th Street  
Cooper Street to 5th Street  
Parking Lot between 5th Street/Penn  
Street/6th Street  
Penn Street from 5th Street

According to O'Hanlon, this memorandum was issued as part of an effort by the Camden County Prosecutor's office to assist with staffing shortages in the Camden Police Department by having the College and other institutions undertake law enforcement duties to help deter crime.

Before the February memorandum, security officers were required to perform security immediately surrounding the old and new college buildings on Penn Street and never conducted any patrols beyond the immediate perimeter of the buildings. They walked around the buildings on an irregular basis, but usually not more than once per shift. Also as part of their duties, the security officers routinely escorted faculty, students and staff to their cars when requested to do so.

On February 23, 2005, the Union filed a grievance alleging that the College violated Articles I and XXIX of the parties'

agreement by expanding the foot patrols. The grievance seeks to have the foot patrols discontinued.<sup>1/</sup>

Article I, Purpose, provides:

It is the intent and purpose of the parties hereto to set forth herein the Agreement covering rates of pay, hours of work and conditions of employment to be observed by the parties hereto, and to secure closer and more harmonious relations between said parties.

Article XXIX, Safety Conditions, provides:

The College President or his/her designee and the Union Chairman or his/her designee shall comprise the Safety Committee. They shall meet when deemed necessary to discuss and rectify any safety conditions which are brought to their attention or any safety conditions they feel necessary to institute. Employee shall use all protective devices and safety equipment provided by the College, and observe all College safety rules.

O'Hanlon states that during grievance meetings, the Union raised concerns about the risk of harm and a lack of training and safety equipment, including mace and other items it believed should be supplied because of the duties the officers were now required to undertake. O'Hanlon asserts that the College would not consider those requests or discuss hazard pay or additional compensation.

The College denied the grievance at all levels. According to Hopp's third level grievance response:

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<sup>1/</sup> The grievance does not challenge the expanded mobile patrols and the parties have not separately addressed them.

The activities of our students, faculty and staff occur throughout the multi-block University District. For example, Camden and Rowan students must use the library and gym at the Rutgers campus. Rutgers students must use the bookstore at our campus. Members of the College community frequent the area restaurants like Pizza from Heaven and the Sixth Street Lounge. Students and staff either park their vehicles at the College's garage, on the streets surrounding the campus and at the waterfront or use public transportation that stops within a few blocks of the College buildings. Therefore the boundaries of the campus' activities cannot be defined as only the two blocks where the buildings are located.

Hopp also stated that the public safety officers have been appropriately trained; have constant radio communication; have been instructed to watch for illegal activity; and, unlike police officers, do not have to investigate, stop or suppress illegal activity. They are also asked to wear vests so that they are not identified as police officers.

O'Hanlon states that security officers are being assigned duties unrelated to student or faculty safety and must cover an area one to three blocks away from the two College buildings. It takes officers 20 to 30 minutes to walk this route and they must do so once per hour. She states that security officers never received any law enforcement training and the Union has concerns about their being harmed because they lack necessary safety equipment and training. O'Hanlon further states that the escorts provided by the security officers extended from the two College

buildings to the occupant's car, usually in the attached garage or on the street in front of the building. She states that officers rarely walked farther than one block from the buildings.

On May 4, 2005, the Union demanded arbitration. Its demand identifies this grievance to be arbitrated:

Whether the College violated the parties' collective bargaining agreement when it required security officers, as part of their assigned duties to patrol by foot, areas off-campus that are well beyond the Camden campus boundaries, patrols which pose a safety threat to these officers. If so, what shall be the remedy?

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]

No statute or regulation is asserted to preempt negotiations.

The College argues that it is exercising its managerial prerogative to expand the patrol area around the campus and that the officers already perform escort services in that area. The College also argues that it has a non-negotiable right to make assignments intended to protect student safety. Finally, the College argues that it has a prerogative to determine whether to provide training and which employees shall receive training; it has already negotiated a procedure to address safety needs and equipment; and it has no obligation to reopen negotiations during the existing contract.

The Union argues that the College cannot require security officers to perform community policing functions and patrol a nine-block beat in Camden, unconnected to the College. The Union also argues that concern for student safety does not convert this assignment into a managerial prerogative. Finally, the Union contends that even if its challenge to the new assignment is not legally arbitrable, compensation and health and safety issues are legally arbitrable. It specifically seeks an opportunity to negotiate for additional compensation for performing duties materially different from those that existed when the wage rate was negotiated.

Public employers have a managerial prerogative to determine the types of services they will provide. New Jersey Transit, P.E.R.C. No. 88-74, 14 NJPER 169 (¶19070 1988), rev'd and rem'd on other grounds 233 N.J. Super. 173 (App. Div. 1989), rev'd and rem'd 125 N.J. 41 (1991). Additionally, public employers, in general, have a managerial prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park. Employers may unilaterally assign duties if they are incidental to or comprehended within an employee's job description and normal duties. See, e.g., 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).

Despite these prerogatives, employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles and beyond their normal duties. See 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); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). Parties negotiate over compensation for a position given the amount, nature and difficulty of the work required. Obtaining contractual protection against the imposition of unrelated and out-of-title duties protects the integrity of the equation between the negotiated salaries and the required work. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980). And it inhibits the potential abuse of imposing extra duties without affording employees any opportunity to seek extra pay. West Windsor Tp. v. PERC, 78 N.J. 98, 113 (1978). In some instances, however, an employer may still have a prerogative to assign duties outside an employee's job description -- for example, when necessary to respond to an emergency or provide proper training or

supervision. In those instances, severable employment conditions may be mandatorily negotiable -- for example, compensation or rotation of assignments among qualified employees. See, e.g., Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp.2d 215 (¶189 App. Div. 1989) (administrators and guidance counselors given cafeteria and hall supervision).

On this record, we cannot conclude that the expanded foot patrols are incidental to the more limited duties previously performed by these security officers. Security officers are now being required to perform 20-30 minute foot patrols once each hour in areas beyond the immediate perimeter of the two-building Camden campus. Thus, a grievance arbitrator can determine whether the parties' agreement contemplates current employees performing these duties under current employment conditions, or whether the Union should have an opportunity to seek revision of the compensation/duties equation to account for the expanded duties. See Somerset-Raritan Sewerage Auth., P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996) (employer's argument that contract's job description and management rights clause authorized assignment was contractual contention to be considered by arbitrator); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2003-95, 29 NJPER 291 (¶89 2003) (employer's challenge to claim that

employees were working out-of-title could be raised to arbitrator).<sup>2/</sup>

The Union separately claims that the contract's Safety Conditions provision has been violated. The College asserts that it has complied with its obligations under the contract. That contractual defense must be raised to the arbitrator. See State of New Jersey, P.E.R.C. No. 99-66, 25 NJPER 94 (¶30041 1999) (declining to restrain binding arbitration over assertion that the workplace was unsafe; Commission took no position on contractual merits).

ORDER

The request of Camden County College for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Mastriani and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: September 29, 2005  
Trenton, New Jersey  
ISSUED: September 29, 2005

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<sup>2/</sup> We recognize the College's managerial prerogative to decide to aid the Downtown Crime Watch Initiative. However, the grievance does not directly challenge that broader prerogative. It seeks only to have an arbitrator consider whether the assignment of these expanded foot patrol duties to these security officers violated the parties' contract.