

D.R. NO. 90-20

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Public Employer,

-and-

Docket No. RO-89-139

JERSEY NURSES ECONOMIC
SECURITY ORGANIZATION,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among assistant directors of nursing at Bergen Pines County Hospital. The Director determines that the assistant directors of nursing perform the job responsibilities of nursing supervisors, who were represented in a separate negotiations unit. The Director also determined that the employees' interest in being represented outweighs the employer's interest in avoiding unit fragmentation.

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Appearances:

For the Public Employer
Ralph W. Kornfeld, Personnel Officer

For the Petitioner
Zazzali, Zazzali, Fagella & Nowak, Esqs.
(Robert A. Fagella, of counsel)

DECISION AND DIRECTION OF ELECTION

On June 19, 1989, the Jersey Nurses Economic Security Organization ("JNESO") filed a representation petition seeking to represent all assistant directors of nursing employed at Bergen Pines County Hospital ("Hospital"). At an exploratory conference conducted on or about July 21, 1989, the parties did not agree to a consent election for the proposed unit. On or about August 21, 1989, the Hospital submitted its written position advising us that the petitioned-for unit is composed of supervisory employees and that a unit of first-line supervisors presently exists. The Hospital contends that the addition of another supervisory employee negotiations unit at the Hospital would create a proliferation of

units. JNESO contends that the petitioned-for employees are not supervisory within the meaning of the Act and even if they are, they have a "discrete interest in the operation of the Hospital which make inclusion in a different bargaining unit composed of non-medical personnel inappropriate." JNESO further alleges that the Commission had previously certified a unit of supervisory nursing personnel in representation case docket no. RO-78-146. JNESO contends that while the assistant director of nursing title "apparently did not exist at the time of certification, it is obvious that both PERC and the Hospital have previously recognized the discreet interest of supervisory nurses as a bargaining group."

The Commission has issued several decisions concerning Bergen Pines County Hospital. In County of Bergen (Operating the Bergen Pines County Hospital), D.R. No. 87-3, 12 NJPER 619 (¶17234 1986), I directed an election among all regularly scheduled full-time and part-time physicians and dentists. It appears from that decision that the Hospital's employees are presently organized into 12 separate negotiations units. They are: blue collar unit; clerical unit; engineers unit; licensed practical nurses unit; registered nurses unit; head nurses unit; first-line supervisors unit; security officers unit; technical services unit; interns and residents unit; non-medical professionals unit; and the physicians and dentists unit. Accordingly, it appears that the Hospital collectively negotiates with two supervisory units, specifically, the head nurses unit and the first-line supervisors unit.

On December 26 and 28, 1989, the Hospital submitted the assistant director of nursing job description and affidavits from three directors of nursing in the long term care, acute services and nursing psychiatry departments. The job description states that the assistant directors of nursing "assist in the appointment of personnel by interviewing and making recommendations" and in assisting the Directors of Nursing "...may have charge of professional and non-professional nursing, attending services and maintenance services." The affidavits state that assistant directors of nursing "effectively recommend hiring, firing and discipline of all subordinates." It further appears that the staff nurses report to the head nurses who in turn report to the assistant directors of nursing. The assistant directors and an administrator report to the chief executive of the Hospital.

On January 10, 1990, we issued a letter tentatively finding that a separate unit of assistant directors of nursing is appropriate.

On January 25, 1990, the Hospital filed a response asserting that the first-line supervisors unit contains health care professionals, including the chief clinical psychologist, chief psychiatric and medical social workers, chief medical technologists and chief x-ray technician. It repeated its objection to the proposed unit, stating it would cause undue fragmentation because there already exists an appropriate supervisors unit.

On January 29, JNESO filed a response denying that a community of interest exists between the assistant directors of nursing and the first-line supervisors unit and contending that, the majority of the supervisors unit have "nothing whatsoever to do with health care." It maintains that no other Hospital unit includes nursing personnel in a non-nursing unit.

JNESO states that the Hospital previously negotiated with a unit of nursing supervisors whose duties were distributed to the assistant directors of nursing and head nurses when the supervisor title was abolished. JNESO alternatively proposes the assistant directors of nursing, like head nurses, are supervisors and might be included in the head nurses' unit.^{1/}

N.J.S.A. 34:13A-5.3 defines a supervisor as an employee having the power to hire, discharge, discipline or effectively recommend such actions. See Tp. of Cherry Hill, P.E.R.C. No. 30 (1970). Assistant directors of nursing are supervisors -- the job descriptions and affidavits support such a finding and the petitioner has not provided information to the contrary.

New Jersey Employees' Labor Union ("NJELU") currently represents a negotiations unit of about 75 supervisory Hospital employees -- both blue collar and white collar and professional and non-professional. NJELU was notified of this proceeding and asked

^{1/} In a settlement of a clarification of unit petition filed by the Hospital, the head nurses were granted recognition in a separate unit.

if it had any interest in representing the petitioned-for employees. NJELU denied representing any health care professionals and indicated no interest in representing the petitioned-for employees.

In Bergen Pines County Hospital, docket no. RO-78-146, the Hospital and New Jersey State Nurses Association executed a consent agreement for an election in a unit of "all registered, professional nursing supervisors." The unit excluded assistant directors of nursing. After the NJSNA won the election, a certification was issued on May 31, 1978. The Hospital asserts that the nursing supervisor title was discontinued in about 1980 and replaced by the assistant director of nurses title. In 1980, the Hospital employed two assistant directors of nursing. It now employs about 15 assistant directors of nursing. The Hospital maintains that it does not negotiate with any nursing supervisors unit.

The Hospital has asserted that the petitioned-for employees have assumed the responsibilities of nursing supervisors and taken on additional responsibilities. The assistant directors of nursing have taken the place of the nursing supervisors and nursing supervisors had been included in a separate bargaining unit. Given the previous certification of a separate unit of nursing supervisors and the exclusion of the assistant directors of nursing from the head nurses bargaining unit, I find that a separate unit of assistant directors of nursing is appropriate.

As in the previous Bergen Pines Hospital cases in which no representative of existing collective negotiations units sought to represent the employees in dispute, I believe that the assistant directors of nursing cannot be denied representation indefinitely because none of the employee organizations representing existing units desires to represent them. Furthermore, the Hospital never sought to include these titles in any other negotiations unit. University of Medicine & Dentistry of New Jersey, P.E.R.C No. 84-28, 9 NJPER 598 (¶14253 1983).

Unit fragmentation is a relative consideration depending upon the circumstances in which it arises. Salem County College, P.E.R.C. No. 85-20, 10 NJPER 532 (¶15244 1984); N.J. State College of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977). The affirmative rights of employees to be represented in collective negotiations must be weighed against creating another negotiations unit. See N.J.S.A. 34:13A-1.1 et seq. and State of New Jersey and Professional Assn. of N.J. Dept. of Education, 64 N.J. 231 (1974), aff'g P.E.R.C. No. 68 (May 23, 1972). Here, it appears that nearly all Hospital employees are included existing negotiations units. Nursing units have been well delineated; registered nurses, practical nurses and head nurses negotiate separately with the Hospital. Furthermore, nursing supervisors, whose job responsibilities are now incorporated into the assistant director of nursing title (and into the head nurse title), had their separate unit. Given this history, I do not believe that a supervisory unit

containing no nursing titles is the most appropriate unit. I find that the history of separate negotiations units for the Hospital's nursing personnel permits the creation of an assistant director of nursing unit.

Accordingly, I find that the petitioned-for unit is appropriate and direct that an election be conducted among employees in the following unit:

Included: All assistant directors of nursing employed by Bergen Pines County Hospital.

Excluded: All licensed practical nurses, registered nurses, head nurses, non-supervisory employees, first-line supervisors, non-health care employees, police employees, craft employees, fire employees, managerial executives within the meaning of the Act and employees in other negotiations units.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: February 15, 1990
Trenton, New Jersey