

P.E.R.C. NO. 87-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Respondent,

-and-

Docket No. CO-85-249-15

AFSCME, COUNCIL 52, LOCAL 549,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Bergen Pines County Hospital violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with AFSCME, Council 52, Local 549 over compensation for the job title of clerk/transcriber-nursing. The Commission rejects the Hospital's contract defense.

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AFSCME, COUNCIL 52, LOCAL 549,

Charging Party.

Appearances:

For the Respondent, Aronsohn & Springstead, Esqs.
(Richard F. Aronsohn, of Counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

On March 29, 1985, Local 549, Council 52, AFSCME ("Council 52") filed an unfair practice charge against Bergen Pines County Hospital ("Hospital"). The charge alleged that the Hospital violated subsections 5.4(a)(1),(3),(5) and (7)^{1/} of the New Jersey

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the commission."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it added stenography to the duties required of ward clerks and and refused to negotiate over additional compensation.

On July 19, 1985, a Complaint and Notice of Hearing issued. The Hospital filed an Answer asserting that the new duties, while not contained within the original job title of ward clerk, were contained within the title of clerk/transcriber and that employees performing them were appropriately compensated under a contractual provision concerning compensation paid employees who have been promoted within the negotiations unit.

On May 6 and 8, 1986, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by June 30.

On July 10, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 87-2, 12 NJPER 585 (¶17219 1986) (copy attached). He concluded that the Hospital had a managerial prerogative to create the job title of clerk/transcriber-nursing department and a contractual right to pay a 5% salary increase to ward clerks being "promoted" to this new title.

On July 17, Council 52 filed exceptions.^{2/} It asserts that the Hearing Examiner erred in determining that the Hospital had a contractual right to refuse to negotiate over the salary to be paid clerk/transcribers in the nursing department.

^{2/} It also requested oral argument. We deny that request.

On July 25, the Hospital filed its response. It supports the Hearing Examiner's contractual interpretation and adds its belief that Council 52 lulled it into implementing a training program for the new duties without making its objection clear.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-9) are accurate. We adopt and incorporate them. However, these findings are incomplete with respect to the job titles and duties of clerks, clerk/transcribers, ward clerks and clerk/transcribers-nursing and pertinent contractual provisions. We add these facts.

The Hospital and Council 52 entered a collective negotiations agreement effective from January 1, 1984 to December 31, 1985. The recognition clause covers many titles, including clerk, clerk/transcriber and ward clerk. These hourly salary ranges for 1985 are specified: clerk - \$5.13-\$8.10; clerk/transcriber - \$5.35-\$8.76; and ward clerk - \$5.13-\$8.60.

Clerks work in the Hospital's business offices. They do general filing and office duties and maybe some messenger and telephone work. Clerk/transcribers also work in the business offices and do transcription and typing as well as other clerical duties. One clerk/transcriber worked in the central nursing office.

Ward clerks work in the wards. They update patient records and keep their charts. In the summer of 1984, the Director of Nursing decided that these employees, like ward clerks in nearby hospitals, should undertake the duty of transcribing a physician's

orders from the order sheet onto the patient's chart, a legal document. The Director testified that such transcriptions were highly intricate and technical, particularly transcriptions of medication. Nothing done by the ward clerks, or the clerk/transcriber in the central nursing office, was comparable.

When the Director informed Council 52's Associate Director, Richard Gollin, of the intended change, Gollin stated that calling the new position "clerk/transcriber" would create confusion with the existing clerk/transcriber title. She agreed it would and that the new title should therefore be called clerk/transcriber-nursing. Gollin did not object to having ward clerks become clerk/transcribers-nursing, but he did take the position that hourly rates for the new position had to be negotiated and that the change was not a "promotion" within the meaning of the contract. He repeatedly expressed this concern to Hospital personnel representatives before he put it in writing on January 21, 1985.

The Hospital is a Civil Service employer. According to the Director of Human Services, the new position of clerk/transcriber-nursing was an "internal variant" on the existing clerk/transcriber title and did not require Civil Service approval.

Article XXXIV of the parties' contract covers promotions. Section 1 provides:

- (a) A promotion is hereby defined as the permanent advancement by an employee to a higher paying job title within the bargaining unit.
- (b) Effective immediately upon promotion, employees will be paid a new rate of pay which shall be the greater of:

- (1) The rate of pay prior to promotion plus five (5%) percent of the individuals' rate of pay for the higher job, or
- (2) The minimum rate of pay for the higher paying job.

It is undisputed that if an employee went from the title of clerk to the longstanding title of clerk/transcriber, this article would apply and govern the rate of compensation without further negotiations. As will be seen, the central and narrow issue in this case is whether this article also applies if an employee goes from the title of ward clerk to the new title of clerk/transcriber-nursing.

The Hospital had a managerial prerogative to create the job title of clerk/transcriber-nursing. Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984); W. Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶16030 1980). However, the rate of compensation for employees filling that title is mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); Fairview Bd. of Ed., P.E.R.C. No. 84-43, 9 NJPER 659 (¶14285 1983). The Hospital refused Council 52's request to negotiate compensation and instead asserted that Article XXXIV established the proper rate of compensation and thus negated any negotiations obligation. We disagree.^{3/}

^{3/} The Hospital argues, and the Hearing Examiner implies, that Council 52 did not diligently press its position and thus lulled the Hospital into proceeding with its training on the assumption it had no negotiations obligation. This argument

Article XXXIV applies and sets the rate of compensation when an employee is promoted from one position in the negotiations unit to another position. Its fundamental premises are that the two unit positions already exist and that rates of compensation have already been negotiated for each position. For example, if a clerk in the business offices earning \$8.10 an hour in 1985 was promoted to clerk/transcriber in the business offices, that employee would receive the higher of either: 1) the rate of pay prior to promotion (\$8.10) plus 5% of his rate of pay for the clerk/transcriber position, or (2) the minimum rate of pay for the clerk/transcriber position (\$5.36). Obviously the first option would apply.

These fundamental premises do not pertain here. The ward clerk position existed, but the Hospital created a new position of clerk/transcriber-nursing and did not negotiate a salary range for that new position. Without a negotiated salary range in place, Article XXXIV's formula could not be applied.

In the collective negotiations agreement, the parties treated clerk and ward clerk as separate positions with different

3/ Footnote Continued From Previous Page

is unfounded: Council 52 did not oppose the Hospital's non-negotiable decision to have ward clerks do transcribing, and it was under no obligation to attempt to stop training. Before training started, Council 52 notified the Director of Human Resources orally and in writing that it desired to negotiate compensation and did not believe the promotion provision applicable. The Hospital took a calculated risk of assuming that its contractual defense was meritorious. Council 52 likewise took a calculated risk of assuming that it could obtain a greater rate of compensation through negotiations than through agreeing that Article XXXIV did apply.

maximum rates of pay. We believe that clerk/transcriber and clerk/transcriber-nursing were similarly separate titles which might, or might not, have resulted in different rates of pay had the Hospital and Council 52 negotiated that issue. The Director of Nursing testified that the transcriptions done by ward clerks would be intricate and technical, would have legal consequences when placed on patient charts and would not be comparable to anything done by the ward clerks or the clerk/transcriber in the nursing office. She agreed with Gollin that the use of the clerk/transcriber title for these new duties would be confusing and inappropriate, and the Director of Human Resources likewise viewed the new title as a variant of the old. Under these circumstances, we believe the Hospital was obligated to negotiate over the rate of compensation for the new title of clerk/transcriber-nursing rather than to assume that the rate of compensation for the existing title of clerk/transcriber could be used to calculate compensation under Article XXXIV's two-part formula. We thus hold that the Hospital violated subsections 5.4(a)(1) and (5).^{4/}

We now turn to the remedy. Only one or two employees occupy the title of clerk/transcriber-nursing, and the Hospital has eliminated funding to expand this program. We will order the Hospital to negotiate with Council 52 over the rates of compensation for employees occupying the position clerk/transcriber-nursing and to negotiate over the rates of compensation for any unit positions created in the future.

^{4/} The allegations pertaining to subsections 5.4(a)(3) and (7) are unfounded and we dismiss them.

ORDER

The Public Employment Relations Commission orders Bergen Pines County Hospital to:

I. Cease and desist from:

A. Refusing to negotiate with Council 52 over the rates of compensation for employees occupying the position of clerk/transcriber-nursing.

II. Take the following affirmative action:

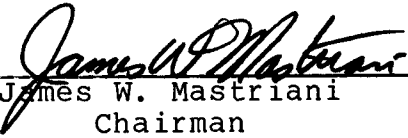
A. Negotiate with Council 52 over the rates of compensation for employees occupying the position of clerk/transcriber-nursing or any other new unit positions;

B. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

The allegations in the Complaint pertaining to subsections 5.4(a)(3) and (7) are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid was not present.

DATED: Trenton, New Jersey
September 25, 1986
ISSUED: September 26, 1986

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate with Council 52 over the rates of compensation for employees occupying the position of clerk/transcriber-nursing.

WE WILL negotiate with Council 52 over the rates of compensation for employees occupying the position of clerk/transcriber-nursing or any other new unit positions.

BERGEN PINES COUNTY HOSPITAL

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, Trenton, NJ 08608, (609) 292-9830.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL

Respondent,

-and-

Docket No. CO-85-249-15

AFSCME, COUNCIL 52, LOCAL 549

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Hospital did not violate §§5.4(a)(1), (3), (5) or (7) of the New Jersey Employer-Employee Relations Act when in August 1984 it unilaterally decided to create a new job title of Clerk-Transcriber in the Nursing Department and thereafter established a training program for the promotion of existing Ward Clerks who qualified into the new job title with a salary increase of 5% in accordance with the provision in the collective negotiations agreement on promotions. AFSCME had argued that the case involved the assignment of additional duties to Ward Clerks and demanded negotiations on compensation. However, the Hearing Examiner found that the Hospital's decision to create a new job title and to promote into it was a non-negotiable managerial prerogative. Further, since the agreement defined a promotion and the compensation for those promoted the Hospital acted in compliance with the agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 87-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL

Respondent,

-and-

Docket No. CO-85-249-15

AFSCME, COUNCIL 52, LOCAL 549

Charging Party.

Appearances:

For the Respondent
Aronsohn & Springstead, Esqs.
(Richard F. Aronsohn, Esq.)

For the Charging Party
Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 29, 1985, and amended on April 4, 1985, by AFSCME, Council 52, Local 549 (hereinafter the "Charging Party" or "AFSCME") alleging that the Bergen Pines County Hospital (hereinafter the "Respondent" or "Hospital") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that late in 1984, the Hospital began discussing changes in the duties of the job title of Ward Clerk; and in January 1985, the magnitude of the change was

made clear, as a result of which AFSCME requested to negotiate the impact of the changes on January 21, 1985; on January 30, 1985, the Hospital agreed to meet but not to negotiate the issue; on March 22, 1985, AFSCME and the Hospital met but the Hospital stated that it would not negotiate the impact of the change in the Ward Clerk's additional duties and responsibilities while AFSCME maintained that the additional duty of transcription was negotiable; immediately following this meeting the Hospital cancelled classes that it was holding to teach transcription to certain Ward Clerks; all which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on July 19, 1985.^{2/} Pursuant to the Complaint and Notice of

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; and (7) Violating any of the rules and regulations established by the commission."

^{2/} The original dates set for hearing were September 11 and September 12, 1985. Due to a series of unforeseen eventualities one hearing date after another was adjourned, the parties bearing no fault, and the hearing was finally set to commence on May 6, 1986.

Hearing, hearings were held on May 6 and May 8, 1986, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 30, 1986.

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Bergen Pines County Hospital is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. AFSCME, Council 52, Local 549 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The applicable collective negotiations agreement between the parties was effective during the term January 1, 1984 through December 31, 1985 (J-1). The Recognition Clause (Article I) includes within the collective negotiations unit the titles of Ward Clerk and Clerk Transcriber (J-1: p. 1, Appendix "A").

4. Sometime prior to the Summer of 1984, Virginia A. Spiegel, the Hospital's Director of Nursing, learned that Ward Clerks in nearby hospitals performed the duty of transcribing physicians' orders, which was not then being done by the Ward Clerks at Bergen Pines (see Ward Clerk job description, J-4). Thus, Spiegel decided to make a change in the Ward Clerk's duties at the Hospital.

5. A grievance meeting at the Hospital on August 16, 1984, was attended by Ralph W. Kornfeld, the Personnel Officer of the Hospital, Spiegel and Richard Gollin, the Associate Director of AFSCME and its chief negotiator for unit employees at the Hospital. Of the three attendees at this meeting, Gollin had the most detailed recollection and testified that the duties of the Clerk Transcriber may have been discussed, that the contemplated changes involved a training program and a growth program for Ward Clerks, and that other hospitals were doing what Bergen Pines was proposing. Based on the information obtained by Gollin at this meeting he requested a Labor-Management meeting.^{3/} Spiegel's testimony was essentially the same as that of Gollin except that she stressed the voluntariness of the proposed change and an orientation program, adding that she considered it a promotion. She also stated that when she mentioned the title of "Clerk Transcriber," Gollin

^{3/} All parties agreed that a Labor-Management meeting does not involve negotiations, which are separately dealt with at formally scheduled negotiations meetings.

mentioned the fact that there were other transcribers in the Hospital although not in the Nursing Department and that there might be some confusion. Spiegel took this to mean that he was questioning whether the title was appropriate.

6. On September 6, 1984, Kornfeld wrote to Gollin, requesting his advice on a date for the holding of the Labor-Management meeting that Gollin had requested at the August 16th meeting, supra (J-2). When Gollin did not respond, Kornfeld sent him a second letter on the same subject on October 2, 1984 (J-3). A meeting was eventually scheduled and held on December 5, 1984 (J-7).^{4/}

7. At the Labor-Management meeting on December 5th, Kornfeld, Spiegel and Elizabeth Sheridan, the Associate Director of Nursing, were present for the Hospital. Present for AFSCME were Elizabeth Baker, an AFSCME Staff Representative, who was representing Gollin, and four unit employees, three of whom were Psychiatric Ward Clerks, one of whom was also a Local 549 officer, Babette Rusiecki, the Secretary-Treasurer. Rusiecki testified that she learned at this meeting that the Ward Clerks would assume additional duties and that there would be a promotion. Although Baker's direct testimony was vague as to what transpired at the

^{4/} Sometime during the Fall of 1984, Sandra Samartine, the Assistant Director of Nursing, prepared a new job description for Clerk Transcriber on the nursing units, which included the transcription of physicians' orders (J-5). This job description was revised on June 17, 1985, by Samartine (J-18).

meeting, Gollin testified that she reported to him that there would be a training program of one to two weeks, that the program was voluntary, and that it involved a promotion with a contractual increase of 5%.^{5/} Spiegel, testifying for the Hospital, said that a draft job description was made available at the meeting, that it was voluntary, that she mentioned a final exam and stressed upgrading, adding that there was no mention of the Ward Clerk position being phased out. Finally, Spiegel testified that Baker did not object to the 5% increase, i.e. a promotion, and thus, Spiegel concluded that 5% was acceptable.^{6/}

8. Spiegel called a meeting of all Ward Clerks for January 10, 1985, and 26 attended (J-8).^{7/} Spiegel considered this a formal meeting on the matter of the creation of a title of Clerk Transcriber for the Nursing Department and provided the details on the change in duties, orientation, examination and a raise of 5%. Rusiecki testified that she was told at this meeting

^{5/} The agreement (J-1) provides in Article XXXIV, Promotions, etc., that a promotion is permanent advancement to a higher paying job title within the unit and that promoted employees shall be paid at a new rate, inter alia, an additional 5% of the rate for the higher job (J-1, p. 31).

^{6/} Recall, however, that this was not a negotiations meeting under the practice of the parties and, further, that Baker testified that she was unfamiliar with Bergen Pines and had been sent to the meeting to get information for Gollin.

^{7/} Ruth Smith, the Vice President of Local 549, attended the January 10th meeting as an observer but no AFSCME representatives were present.

that a promotion was involved, that there would be a 5% increase, that there would be classes and tests, and that the newly trained Ward Clerks would have temporary status for 30 days until the Head Nurse determined if the employees had qualified.^{8/} Rusiecki also testified that she had been told earlier that the additional duties included the transcribing of physicians' orders. Prior to the meeting, Spiegel had prepared a form of memorandum, addressed to her, for completion by each Ward Clerk in attendance at the January 10th meeting (J-9). Each attending Ward Clerk inserted her name and indicated by a "check" whether she was or was not interested "...in pursuing the Clerk-Transcriber, Nursing, promotional opportunity..." (J-9). All 26 Ward Clerks who attended the meeting "checked" the form, indicating that they were "interested" (J-9). One Ward Clerk, who did not attend the meeting, indicated that she was not interested because she saw no need for the position in the Emergency Room (J-9).

9. On January 21, 1985, Gollin sent a letter to Kornfeld, in which he stated that AFSCME had become aware of a "Staff Development" Program involving Ward Clerks (J-10).^{9/} Gollin took issue with the Hospital's decision to treat the changing of the duties and responsibilities of the Ward Clerk as a promotion to the

^{8/} This is consistent with Article XXXIV, §2(a) of J-1.

^{9/} Gollin testified that this letter was written as a result of a telephone call from Rusiecki, following the January 10, 1985, Ward Clerk's meeting, supra.

title of "Clerk Transcriber," referring to Article XXXIV of J-1, supra. Finally, Gollin stated that the change in duties of an existing title is subject to negotiations for additional compensation and he, therefore, requested that a meeting be arranged. Gollin acknowledged that this was the first written request for negotiations. Kornfeld testified without contradiction that he had repeatedly told Gollin that the proposed change in Ward Clerk duties constituted a promotion and not the addition of duties to an existing title.

10. Spiegel scheduled the first training program, involving six Ward Clerks, for February 19 through March 1, 1985. Gollin knew of this but did nothing. After this first group of six Ward Clerks graduated on or about March 1st, Spiegel started a second group of Ward Clerks in the training program, commencing March 17, 1985. This second training program lasted only five days, having been aborted by Spiegel on March 22, 1985, due to a Labor-Management meeting which occurred on that date, infra.

11. As a result of Gollin's request for a negotiations meeting in his letter of January 21, 1985 (J-10, supra) a meeting was eventually scheduled and held on March 22, 1985. This meeting was attended by Kornfeld, Spiegel and Sheridan for the Hospital and by Gollin and Rusiecki for AFSCME. Prior to the meeting, Kornfeld had written to Gollin on January 30th that the Hospital will be pleased "to meet and discuss, not negotiate, this matter..." (J-11). Thus, there was no agreement between the parties that the

March 22nd meeting was a negotiations meeting. At the meeting Gollin argued that the change in Ward Clerk's duties was not a promotional opportunity and therefore he wanted to negotiate additional compensation. Kornfeld stated that the matter was non-negotiable and was rather a promotion with a 5% increase under Article XXXIV of J-1. In view of the position of AFSCME as stated by Gollin at the meeting Spiegel concluded that the training program for Ward Clerks should be terminated and did so immediately after the meeting, supra. Gollin testified that he never objected to the training program, taking the position that what was at issue was the necessity to negotiate additional compensation for the additional duties assumed by the Ward Clerks.

12. The Hospital had budgeted for 1985 sufficient funds to cover a 5% salary increase for those Ward Clerks who qualified for promotion to Clerk Transcriber in the Nugsind Department (1 Tr 130). When the training program was discontinued by Spiegel on March 22, 1985, the funds originally allocated for the 5% salary increases, supra, were eliminated from the 1986 budget (1 Tr 130, 131). Although the funds allocated in the 1985 budget would have covered 30 to 32 Ward Clerks, assuming they qualified for promotion to Clerk Transcriber in the Nursing Department, only the five Ward Clerks who completed the first training program in February 1985 were promoted and received the 5% salary increase (1 Tr 138). Of these five individuals, two subsequently left the Hospital and one retired (1 Tr 137).

DISCUSSION AND ANALYSIS

The Respondent Hospital Did Not Violate §§5.4(a)(1), (3), (5) Or (7) Of The Act When It Elected To Create The Job Title Of Clerk-Transcriber In The Nursing Department And Thereafter Initiated A Training Program For The Promotion Of Qualified Ward Clerks Into The New Title Pursuant To Article XXXIV Of The Agreement Without Negotiations With AFSCME.

The Hearing Examiner does not agree with AFSCME's contention that this case involves nothing more than a unilateral attempt by the Hospital to add to the duties of Ward Clerk the transcribing of physicians' orders. If this case merely involved the creation and assignment of an additional duty to an existing job title such as Ward Clerk, then plainly the Hospital would be obligated to negotiate the change before implementation: New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84, 85 (¶4040 1978) and such workload decisions as Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Wharton Bd. of Ed., P.E.R.C. No. 83-85, 8 NJPER 570 (¶13262 1982); Kingwood Twp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); and Montville Twp. Bd. of Ed., P.E.R.C. No. 86-51, 11 NJPER 702 (¶16241 1985).

However, the Hearing Examiner perceives this case as one involving the Hospital's managerial prerogative to create a new job title, i.e., Clerk-Transcriber in the Nursing Department, and to create a job description for this title which, admittedly, incorporates practically all of the job duties of the existing job title of Ward Clerk with the addition of transcribing physicians'

orders. If a public employer can lawfully alter or develop modifications in an existing job description "...in a manner consistent with the employer's responsibilities and legal obligations...",^{10/} then clearly the Hospital is vested with a managerial prerogative to create a new job classification or description and to establish the promotional criteria for entry into this classification.

AFSCME was put on notice of the Hospital's intention to create the new job title of Clerk-Transcriber in the Nursing Department at a grievance meeting on August 16, 1984. Gollin was present at this meeting and testified as to what he heard was contemplated. Gollin's request for a Labor-Management meeting to explore the subject further was granted and such a meeting was held on December 5, 1984. Admittedly, Gollin was not present at the December 5th meeting but he authorized Baker to attend on his behalf. At this meeting, Spiegel elaborated further and indeed repeated much of what was said to Gollin at the August 16th meeting regarding the Hospital's proposed intention of creating a new job title, clearly stating that it was a promotion and that there would be a 5% salary increase under Article XXXIV of the Agreement. This was followed by a meeting of the Ward Clerks on January 10, 1985,

^{10/} See West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56, 57 (¶11030 1980); Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983); and Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984).

unattended by officials of AFSCME, where the proposed promotion to the new job title of Clerk-Transcriber in the Nursing Department was discussed coupled with the fact that there would be a training program and upon successful completion a 5% increase under the promotion provisions of the agreement, supra.

Kornfeld testified without contradiction that he had repeatedly informed Gollin of the Hospital's plans regarding the creation of the new job title and the fact that it was a promotion with a 5% increase under the provisions of Article XXXIV of J-1. Kornfeld also made clear that what was proposed was not the addition of duties to the Ward Clerk job title but a promotion.

The training program was instituted on February 19, 1985, and continued without objection by Gollin, who knew of its existence and that it was ongoing. Admittedly, Gollin had written a letter on January 21, 1985, to Kornfeld (J-10), requesting negotiations and insisting that a promotion was not involved. This position was reiterated by Gollin at the meeting on March 22, 1985. Spiegel, in the face of Gollin's continued insistence that the matter was a negotiable increase in compensation for the additional duties assigned to Ward Clerks, decided to terminate the training program and did so on that date. Thereafter the five successful graduates of the first training program received 5% increases upon promotion to the new title of Clerk-Transcriber in the Nursing Department but, three of those five graduates subsequently left the Hospital and, as of the date of the hearing either one or two of the initial

graduates was receiving the 5% salary increase. The Hospital, which had budgeted sufficient funds to cover the promotion of 30 to 32 Ward Clerks, eliminated such funding for the 1986 budget.

The foregoing recital of the salient facts in this case make clear that a non-negotiable promotion of qualified Ward Clerks was in fact involved: see Twp. of Egg Harbor, P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985) and Twp. of Woodbridge, P.E.R.C. 86-46, 11 NJPER 679 (¶16234 1985). An additional reason for concluding that the subject matter of the instant Unfair Practice Charge is non-negotiable is found in such decisions of the Commission as Pascack Valley Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11281 1980). In Pascack the Commission affirmed its Hearing Examiner, who had held that while an employer's decision to change the format of the schoolday by increasing pupil contact time by 30 minutes was mandatorily negotiable, the employer's action did not constitute a unilateral change in terms and conditions of employment since it was in compliance with the collective negotiations agreement. The Appellate Division had reached the same conclusion in Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979) where the Court stated that a change in terms and conditions of employment is lawful when authorized by a collective negotiations agreement (168 N.J. Super. at 59, 60).

So, too, in the instant case is the action of the Hospital in compliance with the provisions in Article XXXIV of the collective negotiations agreement. Section 1(a) defines a promotion as "...the

permanent advancement by an employee to a higher paying job title within the bargaining unit" and provides further for a 5% salary increase upon promotion (J-1, p. 31). There is nothing that the Hospital did in seeking to create the new job title of Clerk-Transcriber in the Nursing Department that is in any way inconsistent with Article XXXIV. In fact, the Hospital's action was totally consistent with and in compliance with this provision.

The Hearing Examiner having found that the Hospital's conduct in creating the promotional job title of Clerk-Transcriber in the Nursing Department was lawful it would be inappropriate to order the Hospital to eliminate the 5% salary increase granted and still being paid to one or two of the former Ward Clerks.

* * * *

Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Hospital did not violate N.J.S.A. 34:13A-5.4(a)(1), (3), (5) or (7) when it unilaterally decided in August 1984 to create a new job title of Clerk-Transcriber in the Nursing Department and thereafter to establish a training program for promotion of existing Ward Clerks into this position and then to discontinue the program.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: July 10, 1986
Trenton, New Jersey