

P.E.R.C. NO. 2011-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2010-102

JNESO DISTRICT COUNCIL 1,
IUOE/AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, a petition for scope of negotiations determination filed by the City of Newark seeking a restraint of binding arbitration of a grievance filed by JNESO District Council 1, IUOE, AFL-CIO. The grievance asserts that the City made changes to Tasks and Standards for Head Clinic Nurses without negotiations. The Commission restrains arbitration to the extent the grievance challenges the changed Tasks and Standards and permits arbitration over negotiable severable issues regarding pay rates, training, safety and hours of work.

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, Julien X. Neals, Corporation
Counsel (Mellissa L. Longo, on the brief)

For the Respondent, Kroll Heineman, attorneys (Curtiss
T. Jameson, on the brief)

DECISION

On May 25, 2010, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by JNESO District Council 1, IUOE/AFL-CIO. The grievance asserts that the City made changes to Tasks and Standards for Head Clinic Nurses without negotiations. We grant a restraint of arbitration to the extent the grievance challenges the changed Tasks and Standards. We decline to restrain arbitration over potential severable issues regarding pay rates, training, safety and hours of work that may flow from the changed Tasks and Standards.

The parties have filed briefs and exhibits. These facts appear.

JNESO is the majority representative for a negotiations unit including Public Health Nurses, Clinic Nurses, Public Health Nurse Pediatrics, Pediatric Nurse Practitioners, Nurse Practitioners of Sexually Transmitted Diseases, Head Clinic Nurses and Public Health Nurse Supervisors. The City and JNESO are parties to a collective negotiations agreement with a term of January 1, 2008 through December 31, 2011. The grievance procedure ends in binding arbitration. Article XVI, "Employee Performance", reads in pertinent part as follows:

B. The Union recognizes that it is the City's responsibility to determine levels of performance for its employees, and to establish standards and methods to provide services to the public in the most efficient manner possible.

C. Pursuant to Civil Service Rules and Regulations and standards for acceptable levels of performance may be established and Employees evaluated by the City in relation to the duties and responsibilities of each job.

Head Clinic Nurse is a Civil Service title.^{1/} A document labeled Tasks and Standards describes both general areas of responsibility ("Critical Task") and specific duties ("Standards") within each Critical Task for Head Clinic Nurses. In 2009, the City changed the Tasks and Standards from those

^{1/} See the Appendix for a copy of the Head Clinic Nurse Civil Service job description.

identified in 2008.^{2/} In July 2009, JNESO filed a grievance asserting that the City changed the Tasks and Standards without negotiations in violation of Articles I^{3/}, XVI and any other applicable provisions of the Agreement.^{4/} The grievance was denied and ultimately submitted to binding arbitration.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

^{2/} See the Appendix for a copy of the 2008 and 2009 Tasks and Standards.

^{3/} Article I is the recognition clause of the Agreement.

^{4/} Neither Party has filed factual certifications based on personal knowledge. N.J.A.C. 19:13-2.2(a).

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]

The City argues that it has a non-negotiable right to assign new duties if the new duties are incidental or within the purview of an employee's job description and normal duties and functions. JNESO responds that even if the City has a non-negotiable right to assign new duties, there are severable issues that are negotiable such as pay rates, training, safety and hours of work relating to the changed duties.

A public employer has a managerial prerogative to assign employees' job duties related to their normal job functions. See In re Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287

1983) (energy management control technicians assigned electrical work); In re City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983) (firefighters assigned to close fire hydrants and respond to civil emergencies); In re Mercer County Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980) (park police assigned to check oil and change flat tires on their police cars). In the instant matter, the 2008 Tasks and Standards contained five Critical Tasks with 18 subsets of Standards. The 2009 Tasks and Standards contained seven Critical Tasks and 43 subsets of Standards. However, four of the seven Critical Tasks are substantially similar to Critical Tasks that existed in 2008. There are three new Critical Tasks identified for 2009. The first is "Critical Task #3" which is "[e]nsures compliance with the Health Insurance Portability Act regulations." Standards listed under this Critical Task relate to maintaining the privacy of patient information. The second is "Critical Task #6" which is "[f]acilitates Customer Services." Standards pursuant to this Critical Task involve providing customer service in a timely manner and conveying an appropriate image and conduct. The third is "Critical Task #7" which is "[e]nsures compliance with Department of Child and Family Well-Being Safety Protocol." Standards relating to this Critical Task relate to maintaining current knowledge of safe practices and following safety procedures and reporting unsafe conditions. The

three new Critical Tasks and the related Standards stem from the normal job functions of a Head Clinic Nurse as reflected by the Civil Service job description for Head Clinic Nurse. Moreover, the Civil Service job description contains the following note:

NOTE: The definition and examples of work for this title are for illustrative purposes only. A particular position using this title may not perform all duties listed in this job specification. Conversely, all duties performed on the job may not be listed.

Accordingly, the City's assignment of new Tasks and Standards for 2009 fall within its managerial prerogative to assign unit employees job duties related to their normal job functions and is not negotiable. In re Rutgers University. However, the exercise of managerial prerogatives often affect terms and conditions of employment that are severable from the policy decision and are thus subject to negotiations and arbitration. See Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382, 385-386 (App. Div. 1985). Negotiations and/or arbitration over JNESO's concerns about pay rates, training, safety and hours of work are severable from the policy decision to change the Tasks and Standards and would not interfere with the City's managerial prerogative. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984). Accordingly, we grant a restraint of arbitration to the extent JNESO's grievance challenges the changed Tasks and Standards. We

decline to restrain arbitration over severable claims asserting negotiations were required over changes in pay rates, training, safety and hours of work.

ORDER

The request of the City of Newark for a restraint of binding arbitration is granted to the extent JNESO's grievance challenges the changed Tasks and Standards. The request for a restraint of arbitration is denied over potential severable issues involving pay rates, training, safety and hours of work that may flow from the changed Tasks and Standards.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Colligan, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Eskilson recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey

Appendix

- Civil Service Job Description for Head Clinic Nurse
- 2008 Tasks and Standards for Head Clinic Nurse
- 2009 Tasks and Standards for Head Clinic Nurse

You are reading the State of New Jersey Job Descriptions. This is not a Job Vacancy Announcement.

Job Specification 01951

HEAD CLINIC NURSE

DEFINITION

Under direction in a clinic, has charge of the care and well-being of patients and supervises the professional and nonprofessional nursing activities in the assigned areas; does other related duties as required.

NOTE: The definition and examples of work for this title are for illustrative purposes only. A particular position using this title may not perform all duties listed in this job specification. Conversely, all duties performed on the job may not be listed.

EXAMPLES OF WORK:

Organizes assigned supervisory and nursing work and develops effective work methods.

Gives assignments and instructions to subordinate personnel.

Assumes responsibility for handling, dispensing, and recording use of narcotics, medications, and supplies while in the assigned area.

Prepares requisitions for needed supplies.

Prepares work schedules.

Keeps and/or directs the maintenance of accurate medical and other records.

Prepares reports.

Assists physicians with medical examinations of patients.

Observes and reports symptoms and conditions of patients.

Administers medications and notes reactions.

Will be required to learn to utilize various types of electronic and/or manual recording and information systems used by the agency, office, or related units.

REQUIREMENTS:

EXPERIENCE:

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

CODES: LG-01951 CAH 5/13/97

This job specification is for local government use only.

TASKS AND STANDARDS

APPENDIX B

EMPLOYEE'S NAME: [REDACTED]
SUPERVISOR'S NAME: [REDACTED]
DEPT/DIV : Department of Child and Family Well-Being/Medical Care Services

TITLE: Head Clinic Nurse
APPRAISAL PERIOD: 1/1/08 to 12/31/08

Critical Tasks and Standards for Satisfactory Performance of Each Task

(List Tasks in Order of Importance and Weight)

Standards may specify Time, Quantity, Quality, Behaviors and Conditions)

CRITICAL TASK # 1: Supervises Nurse and Ancillary Staff	
STANDARDS:	<ul style="list-style-type: none">• Ensures optimum clinical services are provided in Childhood Lead Poison Prevention Program• Ensures all clients are addressed in a professional and timely manner• Ensures the maintenance of par levels of all supplies, vaccines and biologicals in all clinical practice areas• Ensures the policies and procedures of the Department of Child and Family Well Being (DCFWB) and contractual agencies are integrated to support optimal patient care.
CRITICAL TASK # 2: Insures education is provided for nursing staff	
STANDARDS:	<ul style="list-style-type: none">• Provides orientation for new staff members• Coordinates education sessions provided by external agencies• Coordinates education sessions related to nursing practice standards• Evaluates staff practice and utilization of time and resources
CRITICAL TASK # 3: Insures Public Health Nursing staff is appropriately assigned	
STANDARDS:	<ul style="list-style-type: none">• Assigns staff members to individual work areas to best meet area needs and staff competency• Insures care provided is in compliance with nursing practice standards
CRITICAL TASK # 4: Maintains records and produces reports	
STANDARDS:	<ul style="list-style-type: none">• Prepares necessary reports reflective of Public Health Nursing activities within the required time periods• Reviews and evaluates charts, records reports referrals• Prepares monthly statistics of activities of clinical areas
CRITICAL TASK # 5: Team Player	
STANDARDS:	<ul style="list-style-type: none">• Assist Director of Nursing• Recommends new policies and procedures• Acts as Director designee during Directors absence• Works with physicians to ensure quality and efficient patient care• All other task as assigned by the Director of Nursing or Medical Director

TASKS AND STANDARDS

APPENDIX B

EMPLOYEE'S NAME: [REDACTED]

TITLE: Head Clinic Nurse

SUPERVISOR'S NAME: [REDACTED]

APPRAISAL PERIOD: 1/1/09 to 6/30/09

DEPT/ DIV: Health and Human Services/Medical Care Services

Critical Tasks and Standards for Satisfactory Performance of Each Task

(List Tasks in Order of Importance and Weight)

Standards may specify Time, Quantity, Quality, Behaviors and Conditions)

CRITICAL TASK # 1: Manages one or more subordinate employees

STANDARDS:

- Responsible for reviewing policies and procedures that are to be carried out by all nurses when staffing Medical Care Service clinics.
- Coordinates with other program nurses, so as to provide services and manage client care according to policies and procedures.
- Responsible for management (inventory, ordering and rotating) of supplies, equipments; drugs and vaccines used for immunizations, pediatrics, adult health and emergency cart.
- Responsible for supervising, scheduling, and training new personnel for Medical Care Services clinic duties.
- Participates in programs to safeguard health of children, including child health conferences, school health, group instruction for parents, and immunization programs
- Ensures optimum and safe clinical services are provided in Medical Care Services in accordance with HIPAA, OSHA, and N.J.A.C. 8:43A guidelines
- Assigns staff members to individual work areas to best meet area needs and staff competency
- Ensures care provided is in compliance with nursing practice standards
- Ensures all clients are addressed in a professional and timely manner
- Ensures the policies and procedures of the Department of Child and Family Well Being (DCFWB) and contractual agencies are integrated to support optimal patient care.
- Provides preceptorship guidance for student nurses
- Provides administrative coverage in the absence of the Director of Nursing and other Head Clinic Nurses as assigned
- Performs other related duties as assigned

CRITICAL TASK # 2: Participates and provides health education to clinical staff, patients and families

STANDARDS:

- Participate in educational development activities including departmental meetings, continuing educational programs
- Participates in community activities, committees, workshops and seminars.
- Provides orientation for new staff members

	<ul style="list-style-type: none"> • Coordinates education sessions provided by external agencies • Coordinates education sessions related to nursing practice standards • Evaluate staff practices and utilization of time and resources • Instructs individuals and families, in health education, promotion and disease prevention
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CRITICAL TASK # 3: Ensures Compliance with HIPAA (Health Insurance Portability and Accountability Act) regulations

STANDARDS:	<ul style="list-style-type: none"> • Maintain privacy of all patient, employee and volunteer information and access such information only on a need to know basis for business purposes. • Comply with all regulations regarding corporate integrity and security obligations • Report unethical; fraudulent or unlawful behavior or activity • Maintains patient confidentiality
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CRITICAL TASK # 4: Participates in quality management

STANDARDS:	<ul style="list-style-type: none"> • Maintains records and produces quality management reports • Prepares necessary reports reflective of Public Health Nursing activities within the required time periods • Reviews and evaluates charts, records, reports, and referrals • Prepares monthly statistics of activities of clinical areas • Participates in quality improvement activities
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CRITICAL TASK # 5: Facilitates effective teamwork

STANDARDS:	<ul style="list-style-type: none"> • Welcome, acknowledge, and share expectations with new team members regarding their job roles and responsibilities • Recommends and participates in the development/revision of new policies and procedures • Works with physicians to ensure quality and efficient patient care • Identifies and delegates task appropriately • Establish clear, team goals.
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CRITICAL TASK # 6: Facilitates customer services

STANDARDS:	<ul style="list-style-type: none"> • Provides services within acceptable timeframes requiring minimal corrections or revisions • Address everyone by a sir Title (Mr/Mrs/MS/Miss) unless otherwise requested • Immediately acknowledge customers and attend to their needs • Conveys a professional image by adhering to DCFWB code of conduct policies • Communicates with a positive attitude and projects confidence at all times
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CRITICAL TASK # 7: Ensures compliance with DCFWB safety protocol

STANDARDS:

- Maintains current knowledge of Department of Child and Family Well-Being (DCFWB) policies and procedures as they relate to safe work practices
- Follow all safety procedures and report unsafe conditions
- Use appropriate body mechanics to ensure an injury free environment
- Follow all infection control procedures including blood-borne pathogen protocols

