P.E.R.C. NO. 92-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Respondent,

-and- Docket No. CO-H-90-11

JNESO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by JNESO against the Bergen Pines County Hospital. The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act when it repudiated the parties' contract by knowingly and continuously violating a contract article concerning temporary reassignments of nurses ("floating"). The Commission is not prepared, on this record, to find that the employer repudiated the contract. The Commission is also not prepared, on this record, to find that the employer has a broad mangerial prerogative to float registered nurses as it sees fit.

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Charging Party.

Appearances:

For the Respondent, Maria LaFiandra, Assistant County Counsel

For the Charging Party, Albert G. Kroll, attorney (Raymond G. Heineman, of counsel)

DECISION AND ORDER

On July 10, 1989, JNESO filed an unfair practice charge against Bergen Pines County Hospital. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),[1/] when it repudiated the parties' contract by knowingly

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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 continuously violating Article 20 - Floating.[2/] JNESO also alleges that the employer's actions were in retaliation for JNESO's prior enforcement of its contract. On May 14, 1990, a Complaint and Notice of Hearing issued.

On September 27, 1990, Hearing Examiner Susan Wood Osborn conducted a hearing. She permitted an amendment adding additional instances of alleged contractual violations. The employer answered the original and amended allegations on the record. It admitted that there had been contract violations, but denied that the violations amounted to a repudiation. It also asserted that patient care is paramount. The parties then examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs on January 31, 1991.[3/]

On March 12, 1991, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 91-27, 17 NJPER 180 (¶22078 1991). She found that the employer had repudiated the contractual provisions on floating, but that the relevant provisions significantly interfered with managerial prerogatives and were thus unenforceable.

On April 8, 1991, after an extension of time, JNESO filed exceptions. It contends that the Hearing Examiner erred by finding

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2/ Floating concerns temporary reassignments of nurses to units on which they do not normally work.

3/ The Hearing Examiner requested that the post-hearing briefs address the negotiability of Article 20. Those briefs are not part of the record before us. N.J.A.C. 19:14-7.2.

that the decision to float nurses is a managerial prerogative. JNESO argues that the unique status of nurses, including their professional interests in assuring quality patient care and legal interests in avoiding liability for inadequate patient care, render the contractual restrictions on floating mandatorily negotiable. On April 25, the employer filed a reply urging adoption of the Hearing Examiner's recommendations.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 2-8) are accurate. We incorporate them here.

We are not prepared, on this record, to find that the employer repudiated the contract. JNESO grieved Article 20 violations eight times in 16 months. Each time, the grievance was sustained. Where nurses were suspended for refusing an order to float, the nurses were made whole. At a March 7, 1990 meeting, the Administrator of Acute Care agreed with JNESO representatives that floating senior nurses from the operating room violated the contract, but stated that it would happen again if the senior full-time nurse was needed and that the matter would have to be resolved in arbitration. That statement, however, must be read in light of management's decisions to sustain grievances alleging breaches of the floating provision, including those contesting suspensions for refusing to float. Under all the circumstances, we

find that JNESO has failed to prove that the employer repudiated the collective negotiations agreement.[4/]

We are also not prepared, on this record, to find that the employer has a broad managerial prerogative to float registered nurses as it sees fit. We believe that at this point negotiated grievance procedures provide an adequate remedy for any alleged contract breaches. Should the employer deny a grievance on negotiability grounds and the majority representative seek to arbitrate the grievance, the negotiability dispute can be resolved in a scope of negotiations proceeding. Should such a dispute arise, we will apply the negotiability balancing tests after examining the particular circumstances of the case. See Local 195, IFPTE v. State, 88 N.J. 393 (1982).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: September 30, 1991
Trenton, New Jersey
ISSUED: October 1, 1991

4/ New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-29, 14 NJPER 638 (¶19267 1988), is inapposite. There, the employer persistently denied contractual grievance hearings despite contrary arbitrators' opinions. Here, the record does not indicate that the employer had claimed a right to breach the contract. In fact, higher levels of management consistently found that contract breaches had occurred and ordered affected employees made whole.

H.E. NO. 91-27

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

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-and- Docket No. CO-H-90-11

JNESO,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Hospital repudiated the parties' contract by repeatedly violating the contractual provisions concerning temporary reassignments ("floating") of nurses between Hospital units. However, the Hearing Examiner finds that the relevant contractual restrictions on floating are managerial prerogatives and thus unenforceable. Therefore, the Hearing Examiner recommends that the Commission dismiss the Complaint.

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. 91-27

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Appearances:

For the Respondent
Maria LaFiandra, Esq.
Assistant County Counsel

For the Charging Party
Albert G. Kroll Esq.
(Raymond G. Heineman, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On July 10, 1989, JNESO filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Bergen Pines County Hospital ("Hospital"). JNESO alleges that the Hospital violated subsections 5.4(a)(1), (3) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A.

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;

Footnote Continued on Next Page

34:13A-1 et seq. ("Act") when it repudiated its collective negotiations agreement with JNESO by knowingly and continuously violating Article 20. JNESO also alleged that the Hospital's actions were in retaliation for JNESO's prior enforcement of its contract.

Pursuant to a Complaint and Notice of Hearing issued on May 14, 1990, I conducted a hearing on September 27, 1990.[2/] At the hearing, I permitted JNESO to amend the charge to add additional instances of the alleged contractual violations. The Hospital answered the original allegations and the amended allegations on the record. It admitted violating the contract but denied repudiating the contract in violation of the Act.

At the hearing, the parties examined witnesses and presented documents. I requested that the parties submit post-hearing briefs on the negotiability of Article 20. Both parties did so on January 31, 1991.

Upon the entire record, I make the following:

FINDINGS OF FACT

1. JNESO represents a collective negotiations unit of

1/ Footnote Continued From Previous Page

(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."

2/ The transcript of the hearing will be referred to as "T-".

about 700 registered nurses employed at Bergen Pines County Hospital (J-1; T-64).

2. JNESO and the Hospital are parties to a current collective negotiations agreement covering nurses for the period January 1, 1989, through December 31, 1990 (J-1).

Article 20 of that contract places certain restrictions on the hospital's temporary reassignment or "floating" of nurses to other units.

Article 20 Section 1 provides:

> a. Seniority as it refers to floating shall be determined by length of bargaining unit service with the Bergen Pines County Hospital except as specifically stated herein.
>
> b. When available supplemental staff personnel shall be floated before regular full-time and part-time staff. This includes coverage for lunches and breaks.
>
> c. A list will be kept on each unit to assure equitable floating.
>
> d. Nursing Management will retain a floating list by division.
>
> e. It is recognized that some units within a division are alike and some are not alike. All nurses assigned to float shall be given an orientation to the unit to which they are assigned to float. If the employee's regular unit is like the unit to which they will float, they will receive a one day orientation provided that they have not worked on that unit during the preceding nine (9) months. Employees assigned to float to unlike units within the division shall have three (3) days orientation.

Article 20, Section 1(f) defines "like" and "unlike" units within each Hospital division. Section 2 provides the following restrictions on floating:

a. The senior full-time nurse on days, evenings and nights for continuity of care shall not float.

b. A nurse who has fifteen (15) years or greater seniority at Bergen Pines County Hospital in a G.N./R.N. capacity shall not float.

c. The officers of the Local unit (President, Vice-President, Corresponding Secretary, Recording Secretary, Treasurer and Grievance Chairperson) and members of the Grievance Committee shall not float, except in an emergency. Their number shall not exceed sixteen (16) during the term of this Agreement.

d. The nurse shall float only within the division subject to the criteria listed herein unless otherwise agreed to mutually.

e. As in the past, the nurse who works overtime or additional time will not be floated from her/his unit unless agreed to mutually.

f. No employee will be in charge of a unit unless the employee has been oriented to the unit for a period of at least three (3) working days within a two (2) week time period. The preplanned orientation criteria must be met.

g. Floating shall occur only during the first hour of an employee's shift, except in case of emergency. Staffing needs known prior to the conclusion of the first hour of the shift shall not be construed as an emergency.

h. Floating for coverage during mealtimes or breaktime shall be subject to all restrictions listed herein.

i. A nurse who is designated "in charge" on the posted schedule by the Head Nurse and is then floated during the first hour of the shift, shall receive charge pay for the entire shift.

The 1987-1988 collective agreement, which was in effect until the parties executed its successor in August 1989, contained the identical floating provisions (T15-16).

4. Between April, 1989 and September, 1990, JNESO grieved the following violations of Article 20:

(a) On April 7, 1989 JNESO grieved the floating of a nurse to an in-charge position without prior orientation. The Hospital Personnel Director sustained the grievance, finding the supervisor violated Section 2(f). (CP-1; CP-2)

(b) On June 19, 1989, JNESO grieved the floating of senior nurses in violation of Article 20, Section 2(a) and (b). The Hospital Personnel Director sustained the grievance, finding that senior nurses were floated even though less senior nurses were available. He cited the supervisor's lack of familiarity with the contract's floating restrictions. (CP-3)

(c) On July 17, 1989, JNESO grieved the suspension of a nurse who refused an order to float to an unlike unit without orientation. That directive violated Section 1(e). The Hospital Personnel Director sustained the grievance and ordered the grievant made whole. (CP-5, CP-6; T26-T27)

(d) On August 28, 1989, JNESO grieved the floating of an in-charge, senior nurse to cover a second unit. This directive to float violated Section 2(a) restricting the floating of senior nurses. The Director of Nursing sustained the grievance. (CP-7; CP-8)

(e) On September 8, 1989, JNESO grieved the suspension of a senior, in-charge nurse who refused a directive to float without prior orientation. This directive violated Section 1(e) and Section 2(a) and (f). The Director of Nursing found that the order violated the contract and ordered that the suspension be rescinded (CP-9; CP-10).

(f) On February 12, 1990, JNESO grieved the suspension of a senior nurse who refused an order to float which violated Section 2(a). On July 24, 1990, the Hospital Director sustained the grievance, rescinded the suspension and ordered back pay. He agreed the administration violated the contract by ordering the senior nurse to float. He reasoned that no "emergency" existed because the administration failed to adequately schedule staff although it knew its needs days in advance. In a July 30 letter, JNESO reminded the Hospital Director that Section 2(a), restricting floating of senior nurses, contained no such "emergency" exception. (CP-11; CP-12; CP-14; CP-15)

(g) On May 29, 1990 JNESO grieved the floating of two operating room nurses, one of whom was the senior nurse, to the intensive care unit (an unlike unit), without orientation and late in their shifts. JNESO argued that the float order violated Sections 1(e), 2(a) and 2(g). The Hospital responded that the two nurses were floated because an emergency existed, although the only duties the two nurses performed involved bathing patients and making beds. This grievance was still pending at the time of the hearings. (CP-16; T-48)

(h) On September 1, 1990 JNESO grieved the floating of a senior nurse in violation of Sections 1(e) and 2(a).[3/] This grievance was awaiting a response at grievance step 3 at the time of the hearing. (CP-17)

5. On March 7, 1990, the floating issue was discussed at a labor-management meeting. Mr. Meyers, the Administrator of Acute Care, a position above the Nursing Director, told JNESO representatives that the Hospital recognized that floating senior nurses violates the contract, but the Hospital would continue to float senior nurses whenever they were needed. He advised the JNESO representatives that the matter would have to be arbitrated. (T-62)

6. Norma Fox, the Hospital's Assistant Personnel Officer, explained that the Hospital has suffered from a shortage of nurses for several years. Since prior to the execution of its current agreement with JNESO, the Hospital has not been able to fill all of its vacancies among the nursing staff (T64).

7. In addition to its full-time staff nurses, the Hospital also employs a pool of "floating" nurses, per diem nurses, and nurses contracted through an agency. The floating nurses are employed specifically to float to areas of greatest need. Both

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3/ On August 25, Staff Nurse Jane Raso was the senior nurse on her unit. She never received orientation in any other unit. The Assistant Nursing Director successively asked her to float to first one new unit, then another. When Raso objected to floating without orientation, the Assistant Nursing Director sent her to the new unit for orientation with another floated nurse who had not worked on that unit for more than a year.

agency nurses and per diem nurses can be called in to cover vacant areas. The Hospital may also cover emergency vacancies by offering overtime (T68-T70).

ANALYSIS

JNESO asserts that the Hospital's continued and deliberate violation of the contract's floating procedures is a repudiation of the contract in violation of the Act. The Hospital acknowledges it repeatedly violated the contract, but denies the violations amount to a repudiation.

While a good-faith dispute over the interpretation of a contractual provision is not an unfair practice, repudiation of the contract provision is. New Jersey Transit, P.E.R.C. No. 89-29, 14 NJPER 638 (¶ 19267 1988). In New Jersey Transit, the Commission found that the employer's continued insistence that the grievant attend grievance hearings, despite contrary arbitrators' opinions interpreting the contract language, was a repudiation of the contractual grievance procedure.

In New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that, with certain exceptions, alleged contract violations do not warrant the exercise of the Commission's unfair practice jurisdiction. However, we found

> A specific claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding pursuant to subsection 5.4(a)(5).... A claim of repudiation may...be supported...by a contract clause that is so

> clear than an inference of bad faith arises from a refusal to honor it.... [Id. at 423]

Here, the parties' contract language is clear. The parties are not in a good faith dispute over the meaning of Article 20's floating provisions. JNESO grieved Article 20 violations eight times in the 16-month period between March of 1989 and June of 1990. All of the grievances heard by the employer were sustained at an early step of the grievance process. Each time, the Hospital administration found the nursing supervisors were floating nurses in violation of the contract.

Further, when the Acute Care Director met with JNESO about the problem, he acknowledged the repeated violations but told JNESO the violations would continue whenever the Hospital felt the assignment was necessary.

By the Hospital's words and actions, it has indicated its intention not to honor the contractual floating provisions. Thus, it has repudiated Article 20 of the contract.

However, in deciding whether the Hospital's repudiation of the contract violated subsection 5.4(a)(5) of the Act, I must address the issue of whether the provisions of Article 20 are mandatorily negotiable, or are unenforceable managerial prerogatives.

Local 195 IFPTE v. State, 88 N.J. 393, 404-405 (1982) articulates the test for determining negotiability.

> ...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.

The Hospital argues that the floating restrictions are not negotiable. It argues that the dominant issue is the Hospital's right to assign its employees to fulfill the Hospital mission of providing adequate patient care. The Hospital relies on Flemington-Raritan Reg Bd. of Ed., P.E.R.C. No. 90-58, 16 NJPER 40 (¶21018 1989); Willingboro Bd. of Ed., H.E. No. 90-12, 15 NJPER 592 (¶20242 1989), aff'd P.E.R.C. 90-43, 15 NJPER 692 (¶20280 1989); and Asbury Park Bd. of Ed., P.E.R.C. No. 88-128, 14 NJPER 411 (¶19164 1988), in which the Commission found that school boards have a non-negotiable right to assign teachers to cover classes for absent teachers. The Hospital argues that, like a board's responsibility to cover for absent teachers, the Hospital has a responsibility to provide adequate patient care by temporarily assigning nurses to other units.

The Hospital also relies on Bergen Pines County Hospital v. JNESO, Superior Ct. Dkt. No. C-15345-88 (unpublished 5/26/89), in which the court vacated an arbitrator's award. In that matter, the Court found that the arbitrator exceeded his authority when he found that the Hospital, contrary to its past practice, denied nurses'

requests for time off Thanksgiving Day. The Court reasoned that, based on the employer's responsibility to assure adequate patient care, the scheduling of nurses' time off is a management prerogative.

JNESO argues that Article 20 is negotiable because it predominantly concerns the work and welfare of nurses. It asserts State statutes, State regulations, public policy and the courts have made nurses jointly accountable with their employer for the quality of patient care. JNESO asserts that the courts have imposed personal liability on individual nurses when harm to a patient results from nurse's conduct which is below the applicable standard of care. It also cites the Nursing Practice Act, N.J.S.A. 45:11-23 et seq., which provides for a nurse's reprimand or license revocation if he/she is found to be guilty of negligence, malpractice, incompetence or misconduct. Therefore, JNESO argues, the nurse who is floated to an unfamiliar work unit is placed at risk of legal liability for patient abandonment and risk of malpractice suits and license forfeiture due to medication or other errors.

The Commission and the Court have previously held that the employer has a managerial right to assign and transfer its employees based upon its assessment of the employee's abilities. In Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Supreme Court found that the substantive decision to transfer or reassign employees is preeminently a policy determination; while the procedural aspects of a reassignment are negotiable, substantive criteria for a

reassignment or transfer are non-negotiable matters of managerial prerogative. See also, Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); Cape May County Bridge Comm., P.E.R.C. No 84-133, 10 NJPER 344 (¶15158 1984), aff'd App. Div. Dkt. No. 5286-83T6 (7/9/85) and Bernardsville Bd. of Ed., P.E.R.C. No. 86-47, 11 NJPER 688 (¶16237 1985); Pennsville Board of Education, P.E.R.C. No. 82-77, 8 NJPER 127 (¶13055 1982); Deptford Township Board of Education, P.E.R.C. No. 80-82, 6 NJPER 29 (¶11014 1980). While these decisions involve permanent transfers and reassignments, they are analogous to the temporary reassignments complained of here.

Further, where the dispute primarily involves the employer's right to assign employees to particular tasks, the employer has a management right to make such assignments. Warren County, P.E.R.C. NO. 85-83, 11 NJPER 99 (¶16042 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982).

Accordingly, I find that the Hospital's decision to temporarily reassign or "float" nurses from one unit to another is an exercise of its managerial prerogative to assign its employees to meet its operational needs.

Article 20, Section 2(a) and (b) prohibiting the assignment of senior nurses from one unit to another impinges on the employer's ability to meet its operational needs. JNESO argues that the nurses' interest in a more comfortable, less stressful work environment is the dominant issue.

The Commission has previously held that seniority cannot be the sole criteria in personnel decisions such as transfers, assignments and promotions. Borough of Carteret, P.E.R.C. No. 88-145, 15 NJPER 468 (¶19196 1988); No. Bergen Bd. of Ed., P.E.R.C. No. 88-56, 14 NJPER 66 (¶19023 1987); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); Lacey Tp., P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987). The employer must be free to consider such other factors as employees qualifications, experience, and special skills in making such a decision.[4/]

Here, Sections 2(a) and (b) specifically restrict the Hospital's ability to select which employee will be assigned to a particular job. They do not contemplate the employer's ability to consider qualifications, experience or special skills. Further, they make no allowance for emergency circumstances. Section 2(a) and (b) are thus unenforceable.[5/]

4/ In Carteret, the Commission found a clause which permitted the use of seniority to be considered among equally qualified employees and permitted an exception in an emergency situation, was negotiable.In Franklin the Commission held that the employer must be free to assess the requirements for each task and determine which of its employees is best suited to the job. In Lacey, the Commission held that a seniority clause which limited the employer's ability to make changes in emergencies it was not negotiable.

5/ Section 2(c) restricting the floating of union officers, which is not one of the sections the Hospital repudiated, is enforceable. See IFPTE, Local 195 v. State of New Jersey, 88 N.J. 393 (1982), carving out an exception for "officers and stewards" to the general rule that substantive criteria for transfers is non-negotiable.

Section 1(e) and 2(f) require the Hospital to give nurses a specific number of training sessions before they can be floated to another unit. Section 1(e) requires the Hospital to give a nurse one-day orientation to a "like" unit and three days orientation to an "unlike" unit before she/he is floated. Section 1(f) defines "like" and "unlike" units. JNESO argues that floating a nurse to an "foreign" unit, such as the ICU or the prisoners' ward, which may require a degree of specialized care or handling, also places the nurse at risk of loss of license and risk of personal legal liability for errors in medication or errors in judgment in an unfamiliar environment.

Section 2(f) places a similar restriction on floating the in-charge nurse to another unit without orientation. JNESO argues that floating the in-charge nurse places an added risk of liability on the nurse in terms of responsibility to delegate duties to other nursing and non-nursing personnel in an unfamiliar unit where she lacks knowledge of not only patient needs, but the abilities of the unfamiliar unit's personnel.

I find that these sections impede the Hospital's ability to provide adequate patient care or meet its operational needs. The Commission has determined that the employer has a managerial prerogative to determine the appropriate level of staff training. However, severable procedural aspects of such programs (such as notice and scheduling) and compensation are mandatorily negotiable. Orange Tp., P.E.R.C. No. 90-119, 16 NJPER 392 (¶21162 1990); Tp. of

Mine Hill, P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985).[6/]

I find the dominant issue here is the Hospital's right to determine where to assign its staff and to determine the appropriate level of training a nurse will receive before being floated. JNESO's concerns regarding the increased likelihood of errors is speculative. I find that Section 1(e) 2(f) to be non-negotiable managerial prerogatives.

Section 2(g) is also not negotiable. It restricts the Hospital's ability to float a nurse to another unit whenever it determines such a need. The Commission has previously decided that notice to employees of assignment changes is negotiable. Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); Phillipsburg Tp., P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983); Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16022 1985). However, this clause involves more than notice. It prohibits the Hospital from floating a nurse after the first hour of her/his shift, thus limiting the Hospital's ability to decide how best to deploy its nursing staff to efficiently run its operation. The

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6/ See also, Township of Bridgewater, P.E.R.C. No. 84-63, 10 NJPER 16 (¶14010 1983), aff'd 196 N.J. Super. 258 (App. Div. 1984); City of Newark, P.E.R.C. No. 86-52, 11 NJPER 703 (¶16242 1985); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982); Borough of Bound Brook, P.E.R.C. No. 79-66, 5 NJPER 126 (¶10075 1979); Township of Maplewood, P.E.R.C. No. 78-89, 4 NJPER 258 (¶4132 1978).

Hospital's need to adequately staff its nursing units is the dominant issue. JNESO's claim that the nurses interest in minimizing their risk of legal liability and risk to their license through charges of patient abandonment is merely speculative.

Having found that the sections of Article 20 which the Hospital violated are managerial prerogatives, these sections are not enforceable. Accordingly, I find that the Hospital's repudiation of these sections is not a violation of the Act.[7/]

CONCLUSIONS OF LAW

(1) The Bergen Pines County Hospital did not violate subsection 5.4(a)(5) of the Act when it repeatedly violated certain non-negotiable sections of Article 20 of its collective negotiations agreement with JNESO.

(4) The Hospital did not violate subsection 5.4(a)(1) or (3) of the Act.[8/]

7/ There is no allegation that the Hospital repudiated any remaining sections of Article 20. Since they are not before me, I make no determination concerning their negotiability.

8/ No facts were asserted or proven which would show that the Hospital committed any independent (a)(1) violation or retaliated against JNESO members for their prior pursuit of contractual grievances.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Complaint be dismissed in its entirety.

Susan Wood Osborn
Susan Wood Osborn
Hearing Examiner

DATED: March 12, 1991
Trenton, New Jersey