

I.R. NO. 91-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL,

Public Employer,

-and-

Docket Nos. CO-91-198 and CO-91-206

JNESO,

Charging Party.

SYNOPSIS

A Commission Designee temporarily restrains Bergen Pines County Hospital from eliminating the position of Head Nurse. A simple reduction in workforce by a public employer is non-negotiable. However, an employer cannot reassign work from one unit to another without first negotiating in good faith with the representative of the affected unit. Here, the Hospital reassigned all work done by the Head Nurses to the Assistant Directors of Nursing without first negotiating this elimination of work with JNESO, the majority representative of the Head Nurses.

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Appearances:

For the Public Employer  
Edwin C. Eastwood, Jr., attorney

For the Charging Party  
Raymond G. Heineman, attorney

INTERLOCUTORY DECISION

On March 19, 1991, JNESO filed an unfair practice charge against the Bergen Pines County Hospital ("Hospital" or "County") alleging that the Hospital engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq., specifically subsections 5.4(a)(1), (3) and (5)<sup>1/</sup> when on or about January 15, 1991, it

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<sup>1/</sup> 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.

notified all Head Nurses at the Hospital that it was eliminating their job titles, laying them off and transferring their duties to non-unit employees, Assistant Directors of Nursing, effective April 8, 1991. JNESO alleges that the Hospital has refused to negotiate in good faith with respect to terms and conditions of employment by unilaterally transferring the duties of Head Nurses to other classifications outside the bargaining unit and by refusing to meet with JNESO.

On March 27, 1991, I executed an Order to Show Cause and made it returnable for April 4, 1991.<sup>2/</sup>

The County argues that the layoff of Health Nurses at Bergen Pines were precipitated by the dire financial condition at the Hospital and in the County. The County is facing a \$10 million deficit. Altogether 87 Hospital employees are to be laid off, including the 36 Head Nurses. In addition, the Hospital might not receive reimbursement for its care of indigent patients for January through June 1991.

The Hospital also contends it can deliver a higher level of health care and do so more economically with an increase in the number of Assistant Directors of Nursing/Clinical Nurse Specialists.

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<sup>2/</sup> At that time, the parties appeared before me, submitted briefs and evidence, presented testimony and argued orally.

The Hospital organization consists of 1 Director of Nursing, 12 Assistant Directors of Nursing and 27 Head Nurses.<sup>3/</sup> Traditionally, each Head Nurse has directly supervised one of the 36 nursing units in the Hospital. However, a Head Nurse may be assigned to supervise more than one nursing unit. JNESO represents both the Head Nurses who are currently under contract as well as the Assistant Directors of Nursing or ADN's. The ADN unit was recently certified by the Commission and there is currently no contract covering ADN's.

On January 15, 1991, representatives of the Hospital met directly with the Head Nurses. They informed the Head Nurses that their title was being eliminated and their duties were to be taken over by the ADN's. All Head Nurses would be laid-off effective April 8, 1991. The Hospital stated that its actions were based upon economic difficulties. The Head Nurses' met with the Assistant Executive Director of Long Term Care and asked if they could negotiate cost cutting measures, including the combining of the two units. The Hospital refused to negotiate over any aspect of this dispute. By letter dated January 28, 1991, JNESO requested a meeting with the Director of Labor Relations at the Hospital to negotiate over the proposed lay-offs. The Director of Labor Relations refused to negotiate.

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<sup>3/</sup> There are 36 head nurse positions but 9 of the positions are currently unfilled.

The Hospital is creating 15 new ADN positions and 5 clinical specialist positions. The job requirement of ADN's includes a Bachelor of Science in Nursing degree, whereas the Head Nurse position merely requires a Registered Nurse License. Of the 29 incumbent, permanent, provisional and temporary Head Nurses, 13 have Registered Nurse Licenses only. Seven of the current Head Nurses have been offered positions as ADN's. The other 8 new ADN positions are vacant. The balance of the Head Nurses may bid down to positions as nurses.

It is undisputed that the duties of these new positions will include those currently performed by the Head Nurses. The Head Nurses provide direct clinical supervision of the nursing staff. The ADN's do not currently do clinical supervision. Their duties now include handling nurse staffing problems, administration of sick and leave time, etc.

On March 9, 1991, the Director of Nursing issued a memorandum to the ADN's stating that, with the elimination of the Head Nurse title on April 8, 1991, patient care units would be clustered and supervised by the ADN's.

Head Nurse salaries average approximately \$54,000 per year, whereas the ADN salaries average approximately \$46,000 per year. Those employees who are to receive a promotion to the ADN position would be reduced in salary by approximately \$8,000 per year.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied

by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>4/</sup>

A simple reduction in work force by a public employer cannot be the subject of negotiations with a public employee representative. See Union Cty. Bd. of Ed. v. Union Cty. Teachers Assn., 145 N.J. 435 (1976).

Here, if the County intended only to lay-off Head Nurses, it would have a non-negotiable right to do so. However, it is taking all the work done by these employees and reassigning it to members of another of the Hospital's negotiations units. Reassigning work from employees in one unit to another unit is mandatorily negotiable. The reassignment of work from one unit to another without first negotiating in good faith is a per-se unfair practice. Rutgers University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶1224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (1983); City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988). Here, the

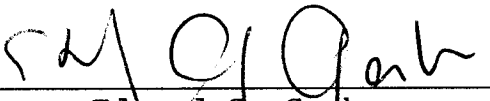
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<sup>4/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Hospital did not first attempt to negotiate any efficiency or cost saving measures with JNESO, the majority representative.

On balance, given JNESO's substantial likelihood of success in prevailing on the law and facts in this matter and given that the impending action would be fatal to the Head Nurse unit, I believe the least disruptive course of action here is to restrain the impending reorganization, pending good faith negotiations.

Accordingly, Bergen Pines County Hospital is restrained, pending a final Commission decision, from unilaterally transferring unit work currently performed from its Head Nurse unit.<sup>5/</sup>

  
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Edmund G. Gerber  
Commission Designee

DATED: April 5, 1991  
Trenton, New Jersey

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<sup>5/</sup> This matter will proceed to a plenary hearing.