

P.E.R.C. NO. 2001-31

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2000-114

UMDNJ COUNCIL OF AMERICAN ASSOCIATION  
OF UNIVERSITY PROFESSORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the University of Medicine and Dentistry of New Jersey for a restraint of binding arbitration of a grievance filed by the UMDNJ Council of American Association of University Professors. The grievance alleges that when UMDNJ brought the base salaries of 63 faculty members up to the appropriate range, those who were receiving clinical and faculty practice supplements had the amount of those supplements reduced. The Commission does not consider UMDNJ's assertion that the AAUP waived its right to negotiate and arbitrate any issues concerning supplemental salaries since that is an issue of contractual arbitrability. The Commission, assuming, for purposes of this decision alone, that UMDNJ has a right to set supplemental salaries to attract faculty, does not believe that that right should be extended to include a prerogative to reduce supplemental salaries unilaterally. The Commission finds that UMDNJ has not articulated any educational policy reason for the reductions that outweighs the employees' interest in preserving that portion of their salaries.

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, John J. Farmer, Jr., Attorney General  
(Lisa Tichauer Wahler, Deputy Attorney General, on the  
brief)

For the Respondent, Sterns & Weinroth, P.C., attorneys  
(Mark D. Schorr, on the brief)

DECISION

On June 22, 2000, the University of Medicine and Dentistry of New Jersey petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the UMDNJ Council of American Association of University Professors. The grievance alleges that when UMDNJ brought the base salaries of 63 faculty members up to the appropriate range, those who were receiving clinical and faculty practice supplements had the amount of those supplements reduced. The grievance seeks to have all faculty brought up to range without decreasing faculty practice or other salary supplements.

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

The AAUP represents all full-time and part-time teaching and research faculty and librarians. UMDNJ and AAUP are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 2000. The grievance procedure ends in binding arbitration.

UMDNJ faculty receive a base salary that is negotiated between UMDNJ and the AAUP. Some faculty also receive a supplemental salary, the amount of which is determined for each member through negotiations between the individual faculty member and the department chair. Supplemental salaries are provided to approximately 300 to 500 of the 1200 AAUP unit members. Supplemental salaries are offered to induce doctors to come to UMDNJ or offered to faculty members who devote time to administrative tasks for a department. UMDNJ points out that department chairs may also seek to withhold or reduce supplemental salaries if a faculty member fails to meet expectations, but the record does not show that any department chairs have exercised such authority.

On November 8, 1999, the AAUP filed the following grievance:

From information on academic base salaries provided to us by the university, the AAUP determined that 63 people in the AAUP bargaining unit were being paid below range and subsequently asked the university administration to bring them up to range and

give them the salary money they were owed retroactively. The administration promised to do this. We learned this was to be done when people received their increases for FY2000, but that it was going slowly. I sent an email message to Howard Pripas informing him of this and asking that the situation be corrected. We also sent letters to the faculty involved telling them we had informed the university they were below range and that they could expect the increase. We subsequently learned that those at [Robert Wood Johnson Medical School (RWJMS)] ... whose base salaries were below range and who were receiving clinical supplements had their base salaries brought up to range by the university taking funds from their faculty practice and moving them to their academic base salary, so that they received no total increase. It appears that the merit amount was applied to the former salary, and then the salary was brought up to range by the shifting of funds from faculty practice. Salaries should have been brought to base, from funding sources other than the individual's own faculty practice earnings, before the increases were applied. In addition, the AAUP has learned that similar shifting of faculty practice money to avoid paying the increases negotiated by the AAUP has been done in at least one department at both SOM and RWJMS.

To correct this grievance the following should be done:

1. Where AAUP bargaining unit members' base salaries were brought up to the academic base by shifting their own faculty practice money to their academic base salary for this purpose, restore the money to their faculty practice allotment.
2. Bring all individuals in the AAUP bargaining unit whose salaries were below the range up to the academic base salary for their position retroactive to the time their salary was first below range prior to calculating their salary increase for FY 2000, and pay them the salary money owed them retroactively. These increases should not be funded by the individual's own faculty practice funds.

3. Throughout the university, end the practice of bringing people up to the base of their range by shifting money from their faculty practice allocation, or other salary supplement, to their academic base, thus denying them their negotiated increases.

On December 29, 1999, the acting senior vice-president for academic affairs responded. He stated:

The University's position is that the source of funding for academic base salaries is not a grievable matter under the collective bargaining agreement.

Even if the source of funding were grievable, the 1995-2000 AAUP - UMDNJ Contract, particularly Article VIII and the cited Appendices, say nothing about the source of funding for academic base salaries. Therefore the grievance would be denied as not stating a violation of the contract.

The only grievable matter contained in the Union claim is whether the University actually complied with Article VIII and Appendix A-C in payments to academic base.

Without examining FY2000 raises (which were not the subject of the grievance), the issue is whether the sixty-three cited individuals were paid at the contractual rate. The evidence we have gathered indicates they are currently being paid at the current contractual rate (FY1999 raises). In addition, their academic base salaries were paid fully retroactive to the effective date of the new salary scale, i.e., September 2, 1998.

Therefore, this claim, particularly as it relates to the source of funding, is denied for the reasons stated above.

On January 26, 2000, the AAUP demanded arbitration. This petition ensued.

UMDNJ asserts that the AAUP waived any right it had to negotiate over supplemental salaries. UMDNJ relies on the Hearing

Examiner's recommendations in another case involving these same parties. H.E. No. 2000-13, 26 NJPER 377 (¶31151 2000). UMDNJ further asserts that the salary supplements are not negotiable because the determinations of who will receive the supplements and how much they will receive are managerial prerogatives.

The AAUP asserts that UMDNJ has inaccurately portrayed the underlying issue, but that even if this matter involved supplemental income it is still a grievable issue. AAUP contends that the question is whether 63 faculty members were paid at the contractual rate. The AAUP further contends that UMDNJ's assertion that the issue of whether the Association waived its right to negotiate supplemental salaries is a contractual defense outside our scope of negotiations jurisdiction.

Our jurisdiction in a scope of negotiations case 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. [78 N.J. at 154]

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

we will not consider whether the AAUP waived its right to negotiate and arbitrate any issues concerning supplemental salaries. Those defenses do not go to the question of whether reductions in supplemental salaries are mandatorily negotiable and legally arbitrable in the abstract.

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]

Salary is undoubtedly a fundamental term and condition of employment. As early as 1973, our Supreme Court noted that compensation was a term and condition of employment that the Legislature surely contemplated would be negotiated under the Act. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); see also Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322 (1989).

The bulk of the employer's arguments address waiver, an issue of contractual arbitrability that we cannot consider. The remainder of the employer's argument is that discretion in deciding the level of supplemental compensation advances the quality of education and health care provided by the University and may not be the subject of negotiation. It asserts that these salaries provide those individuals who would not be drawn to the University by the base salary alone with a measure of compensation that, given their abilities or standing in the professional community, would make a position at the University desirable.

Assuming for the sake of this decision alone that UMDNJ has a right to set supplemental salaries to attract faculty who otherwise would not join the faculty, we do not see why that right should be extended to include a prerogative to reduce supplemental salaries unilaterally. UMDNJ has not suggested that salary reductions are necessary to retain faculty. It has suggested that department chairs may seek to withhold or reduce supplemental salaries based on a faculty member's failure to fulfill expectations, but that was not the basis for the reductions in this case.<sup>1/</sup> Sixty-three faculty members had their faculty

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<sup>1/</sup> Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311 (1979), cited by the employer, addressed increment withholdings of individual teaching staff members. No individual decisions to reduce employee compensation were made in this case and the reach of Bernards has been narrowed by the 1990 amendments to the Act. See N.J.S.A. 34:13A-26, 27 and 29.

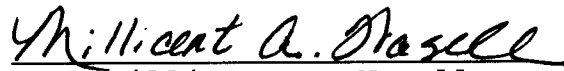


practice compensation reduced and the employer has not articulated any educational policy reason for the reductions that outweighs the employees' interest in preserving that portion of their salaries. Under these circumstances, we decline to restrain binding arbitration.

ORDER

The request of the University of Medicine and Dentistry for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: November 30, 2000  
Trenton, New Jersey  
ISSUED: December 1, 2000