

P.E.R.C. NO. 84-155

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-83-134

HOUSESTAFF ORGANIZATION OF
THE UNIVERSITY OF MEDICINE
AND DENTISTRY OF NEW JERSEY/
COMMITTEE OF INTERNS AND
RESIDENTS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance that the House-staff Organization of the University of Medicine and Dentistry of New Jersey/Committee of Interns and Residents filed against the University of Medicine and Dentistry of New Jersey. The grievance had alleged that certain post-graduate employees were contractually entitled to inclusion in the State Temporary Disability Plan. The Commission rejected the employer's assertion that the employees in question were interns not entitled to coverage under the Temporary Disability Benefits Law.

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Appearances:

For the Petitioner, Irwin I. Kimmelman, Attorney
General of New Jersey
(Mary Andruzzi, Deputy Attorney General, of
Counsel and on the Brief)

For the Respondent, Ball, Hayden, Kiernan &
Livingston, Esqs.
(David Tykulsker, of Counsel and on the Brief)

DECISION AND ORDER

On May 25, 1983, the University of Medicine and Dentistry of New Jersey ("UMDNJ") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks to restrain binding arbitration of a grievance the Housestaff Organization of the University of Medicine and Dentistry of New Jersey/Committee of Interns and Residents ("Committee") has filed. The grievance alleges that UMDNJ violated its collective negotiations agreement with the Committee when it refused to provide temporary disability benefits to employees represented by the Committee.

Both parties filed briefs, affidavits, and documents. The Committee has filed an amended brief. The following facts appear. ^{1/}

UMDNJ and the Committee have entered a collective negotiations agreement effective from July 1, 1981 through June 30, 1983. Pursuant to the recognition clause, the Committee is the exclusive representative of approximately 780 "...full and regular part-time physicians and dentists titled intern, resident and fellow who are designated herein as Housestaff Officers employed by [UMDNJ]." Article IX of the agreement provides:

Employees shall be included in the State Temporary Disability Plan, which is a shared cost plan providing payments to employees who are unable to work as the result of non-work connected illness or injury.

The agreement provides for binding arbitration of grievances involving contractual disputes.

UMDNJ has ceased deducting for temporary disability coverage from the paychecks of first year housestaff. It has also denied a claim of Dr. Lawrence Schaefer for temporary disability benefits. The Committee has filed two grievances challenging the University-wide discontinuance of coverage under the State Temporary Disability Plan and the specific denial of benefits to Dr. Schaefer. On April 29, 1983, the Vice President for Personnel Resources denied these grievances because he believed that first year housestaff were not eligible for coverage under the State Temporary Disability Plan and because Dr. Schaefer

^{1/} The Commission held this case in abeyance pending the parties' settlement discussions. Processing of this case resumed in April, 1984.

allegedly fell within that category.^{2/} The Committee sought binding arbitration and the instant petition ensued.

In IFPTE, Local 195 v. State, 88 N.J. 383, 404-405

(1982) ("Local 195"), our Supreme Court summarized the standards for determining when a subject matter is mandatorily negotiable and hence may be submitted to binding arbitration:

To summarize, 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.

Here, the provision of temporary disability benefits intimately and directly affects the welfare of public employees without significantly restricting the determination of governmental policy. In re Watchung Borough Bd. of Ed., P.E.R.C. No. 80-110, 6 NJPER 111 (¶11059 1980). The only dispute is whether a specific statute or regulation preempts negotiation over the inclusion of first year housestaff in the State Temporary Disability Plan.

Under State v. State Supervisory Employees Ass'n, 78

N.J. 54, 80-81 (1978), a statute or regulation preempts negotia-

^{2/} Dr. Schaeffer appealed UMDNJ's denial of temporary disability benefits to the Division of Unemployment and Disability Insurance. A hearing was held on May 11, 1983. Another hearing was scheduled for September 27, 1983, but postponed upon the

Department of UMDNJ and Dr. Schaeffer to await this Commission's

tion when it specifically "sets" a term and condition. The Court elaborated:

We use the word "set" to refer to statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer.

Id at p. 60.

* * *

It is implicit in the foregoing that statutes or regulations concerning terms and condition of public employment which do not speak in the imperative, but rather permit a public employer to exercise a certain measure of discretion, have only a limited preemptive effect on collective negotiation and agreement. Thus, where a statute or regulation mandates a minimum level of rights or benefits for public employees but does not bar the public employer from choosing to afford them greater protection, proposals by the employees to obtain that greater protection in a negotiated agreement are mandatorily negotiable. A contractual provision affording the employees rights or benefits in excess of that required by statute or regulation is valid and enforceable.

Id at p. 81.

See also Local 195; Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982).

The Temporary Disability Benefits Law is codified at N.J.S.A. 43:21-25 through N.J.S.A. 43:21-55. N.J.S.A. 43:21-26 declares that the legislation should be liberally construed because it is remedial and intended to protect employees "...against the suffering and hardship generally caused by involuntary unemployment." N.J.S.A. 43:21-27 defines an individual "covered" under the law as "...any person who is in employment, as defined in the chapter to which this act is a supplement, for which he is entitled to remuneration from a covered employer...." The temporary benefits disability law supplements the chapter on unemployment compensation benefits. N.J.S.A. 43:21-19(i) of that chapter defines "in employment", in part, as:

* * *

(B) (i) Service performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities or in the employ of this State and one or more other states or their instrumentalities for a hospital or institution of higher education located in this State, if such service is not excluded from employment under paragraph (D) below.

Paragraph D does not mention housestaff, interns, or residents.

N.J.S.A. 43:21-19(i)(7)(V) states, however, that the term "employment" shall not include:

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State; and service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school approved pursuant to the law of this State.

UMDNJ contends that N.J.S.A. 43:21-19(i)(7)(V) bars the inclusion of first year housestaff (designated in UMDNJ's brief as PGY-I's)^{3/} in the State Temporary Disability Plan set up by the Temporary Disability Benefits Law because, it asserts, PGY-I's are "interns" within the meaning of that section. In a footnote in its initial brief, UMDNJ asserts:

The designation "PGY-I" refers to an individual who has just completed medical school and is serving his or her first year as a member of the housestaff. As a matter of common knowledge and usage, that definition is synonymous with the term "intern."

^{3/} PGY-I is an abbreviation of Post Graduate Year I.

The Committee asserts that most PGY-1s are not "interns" within the meaning of N.J.S.A. 43:21-19(i)(7)(V) and that UMDNJ has failed to carry its burden of coming forward with sufficient evidence to show that all PGY-1s are "interns." It argues that the Temporary Disability Benefits Act is a remedial statute which must be liberally construed in favor of coverage and that the word "intern" should therefore be read to encompass only students.

The Committee has submitted an affidavit of its contract administrator which avers the relevant (and undisputed) facts found in the following five paragraphs.

Employees designated PGY-1s are generally working during their first year after graduation, but some housestaff have been designated PGY-1s although they have completed more than one year of post-graduate medical training. PGY-1 -- in addition to generally, but not always indicating the first year of post-graduate work -- is a designation used in the parties' collective negotiations agreement to designate a certain salary level.

The chief difference between an intern and a first-year resident is the nature of the employment relationship. An internship lasts one year during which the intern rotates through various departments. The internship does not lead to accreditation in a speciality, and, at the end of the year, the intern must apply for a residency, either at the same or an outside institution. There is no assurance an intern will remain with the same institution at the end of the first year. A residency, by contrast, is a

multi-year employment relationship leading to accreditation in a medical speciality. Residents specialize in one department and do not rotate. Residents need not reapply at the end of the first year.

The historic differences between interns and residents are embodied in the American Medical Association's respective categorization of residencies into transitional and categorical. With the exception of osteopathy, internships have become increasingly rare.

During the past year, UMDNJ employed five persons in a transitional program of post-graduate medical education as the American Medical Association defines such programs. These five persons were classified as PGY-Is. The transitional program lasted for one year and did not guarantee admission into a residency program. The five employees rotated among medical departments. A committee headed by the Director of Medical Education administered the transitional program whereas each medical department administers its own residencies.

The Committee asserts that with the exception of the five employees in the Transitional Program and the 35 employees in the osteopathic program, every other PGY-I is a resident as defined by the American Medical Association. It specifically contends that Dr. Schaefer is a first year resident in orthopedics within these criteria. The contract administrator further avers that with the exception of the 40 employees who may arguably be regarded as interns,^{4/} the hundreds of remaining PGY-Is, other

^{4/} The Committee asserts that coverage of these PGY-Is should be allowed under the statute as a de minimis extension of the statute consistent with its liberal goals.

We have the authority to interpret statutes other than the New Jersey Employer-Employee Relations Act when necessary to resolve a scope of negotiations dispute. Bernards Township Board of Education v. Bernards Township Ed. Ass'n, 79 N.J. 311 (1979). Based on this record, we are not persuaded that UMDNJ is entitled to the restraint of binding arbitration it seeks. In particular, given the Legislature's mandate that the Temporary Disability Benefits Law be construed liberally and the apparent differences between interns and residents at UMDNJ and in the medical profession generally, we are not satisfied that all PGY-Is are "interns" within the meaning of N.J.S.A. 43:21-19(i)(v).^{6/} Instead, it appears probable to us that only the 40 PGY-Is in the Transitional or osteopathic program are "interns" not entitled to coverage under the Temporary Disability Benefits Law.^{7/} The Committee has adduced specific evidence that the remaining PGY-Is, including Dr. Schaeffer, would probably be considered residents, not interns. On this record, therefore, we decline to restrain binding arbitration of the Committee's grievance.

^{6/} We also agree with the Committee that the word "intern" in that section may be compared with other classes of persons -- patients and student nurses -- in order to determine its reach. Given the transitory and non-renewable nature of patient and student nurse employment, the word "intern" may logically be construed to mean those post-graduate employees who have short-term and non-renewable relationships with the employer. Further, the absence of any references to "residents" in the statute may bespeak an intention to distinguish between interns and residents.

^{7/} We do not have the power to extend the statute to cover these employees, regardless of whether such an extension could be categorized as de minimis. Nevertheless, we believe that coverage under a substitute private plan for these 40 employees is not preempted by statute and is mandatorily negotiable.

housestaff, the medical staff, and the administration generally refer to PGY-Is as "residents" or "first year" residents. All PGY-Is are professional medical employees who receive employment benefits, including salary, paid vacation time and paid sick days, similar to those afforded other professional medical employees.

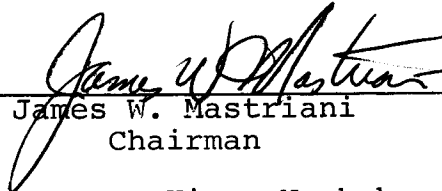
The Committee also argues that even if all PGY-Is are "interns" and thus barred from joining the State Temporary Disability Plan, there is nevertheless no statutory bar to UMDNJ contracting with a private carrier to provide equivalent temporary disability benefits. The Committee's attorney has submitted a July 7, 1983 letter between him and the Assistant to the Director of the Division of Unemployment and Disability Insurance confirming that employees exempted from the mandatory requirements of State Plan coverage could nevertheless be covered by private plans which did not need the State's approval. The Committee then argues that Article 14(E) at least entitles it to equivalent temporary disability benefits, even if participation in the State plan is not allowable, and that an arbitrator should be allowed to so rule.^{5/}

^{5/} UMDNJ has submitted an affidavit of its Dean/Executive Vice-President in response. He alleges that PGY-Is are students primarily interested in educational accreditation; that most PGY-Is are not licensed and that licensure is obtained at the end of the final or second post-graduate year; and that PGY-Is are always under the supervision and ultimate responsibility of the attending physician. He further alleges that since 1950, it has been an increasingly common practice for only a small percentage of graduating medical students to enter first year programs which involve rotation among different disciplines and that now an internship is usually training in a specific speciality. The Committee then submitted a response stating that the employees in question were physicians and dentists, not students, as recognized by the recognition clause of the contract.

ORDER

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Butch was not present.

DATED: Trenton, New Jersey
June 25, 1984
ISSUED: June 26, 1984