

P.E.R.C. NO. 2002-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX (DEPARTMENT OF
HEALTH AND REHABILITATION),

Petitioner,

-and-

Docket No. SN-2001-57

JNESO, DISTRICT COUNCIL 1,
IUOE/AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the County of Essex (Department of Health and Rehabilitation) for a restraint of binding arbitration of a grievance filed by JNESO, District Council 1, IUOE/AFL-CIO. The grievance contests the assignment of medical chart review duties to floor nurses. The Commission restrains arbitration to the extent the grievance contests the employer's right to assign JCAHO medical chart review duties to floor nurses. Whether nurses are contractually entitled to additional compensation for these duties and the method of assigning these duties may be pursued through arbitration.

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, Juan C. Fernandez, Essex County
Counsel (Kenneth Aaron Rosenberg, on the brief; Timothy
F. Stafford, on the reply brief)

For the Respondent, Lynch, Martin & Kroll, attorneys
(Lori M. Smith, on the brief)

DECISION

On May 10, 2001, the County of Essex (Department of
Health and Rehabilitation) petitioned for a scope of negotiations
determination. The County seeks a restraint of binding
arbitration of a grievance filed by JNESO, District Council 1,
IUOE/AFL-CIO. The grievance contests the assignment of medical
chart review duties to floor nurses.

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

JNESO represents professional nurses including registered
nurses and the Hospital Utilization Review Coordinator (HURC).

Although the HURC is listed as a "supervisor of nurses" title in the parties' collective negotiations agreement, JNESO contends that this position has no supervisory authority.

The parties' collective negotiations agreement was effective from January 1, 1996 through December 31, 1999. They are in negotiations for a successor agreement. The grievance procedure ends in binding arbitration. The contract also provides for a \$1 per hour differential for RNs working in a supervisory capacity.

The Essex County Hospital Center is a four hundred bed inpatient psychiatric hospital. The hospital is licensed by the State of New Jersey, Department of Health and Senior Services; accredited by the Joint Commission on the Accreditation and Healthcare Organizations (JCAHO); and funded in part by the Health Care Finance Administration. To continue accreditation and funding, the hospital must pass inspections by each of these regulatory bodies. Each body reviews patient medical charts as part of its inspection.

The JCAHO applies standards set forth in the Comprehensive Accreditation Manual for Hospitals. The standards at issue are IM.7.10 and IM.7.10.1. They provide, in part:

Medical records are reviewed on an ongoing basis for completeness and timeliness of information, and action is taken to improve the quality and timeliness of documentation that impacts patient care.

* * *

Medical record review is based on a representative sample (a sample representing the practitioners providing care and of the care provided). The review process is conducted by the medical staff, nursing, and other relevant clinical professionals. The focus of the review is on information available at the point of care.

It is expected that findings from the medical record review, as well as medical record completion statistics, will be available for at least quarterly review and are evident in the reports of this review (for example, medical record committee minutes or medical executive committee minutes).

In 1997, the hospital's senior management team determined that the hospital's internal chart review system was not in compliance with JCAHO standards requiring quarterly reviews by medical staff, nurses and other clinical professionals. According to Dr. Barry Mitchell, the Chief Clinical Psychologist and Director of Professional Services, the hospital's failure to pass inspections could jeopardize its license, accreditation and financing.

The hospital instituted a medical chart review program that requires medical charts to be reviewed by a team of three employees from each profession, including physicians, nurses, psychologists, social workers and rehabilitation counselors. According to Mitchell, nurses are required to participate in the medical chart review because they are active members of the treatment team. He states that the HURC is not supposed to perform chart reviews because she does not treat patients. The

HURC coordinates the medical chart review process, ensuring that chart reviews are performed in an appropriate and timely manner and forwarding the raw data to him for analysis.

The HURC job description includes:

Reviews and analyzes records to insure internal consistency and completeness and compliance with standards set by outside accrediting agencies.

The Registered Nurse job description does not contain similar recordkeeping responsibilities.

HURC Louise Calabrese states that her primary responsibility is to review the hospital's use of its beds. She does not participate in patient treatment. She is also responsible for administering the medical chart review program. This involves scheduling the program, training the participants, ensuring that reviews are completed, and forwarding the completed reviews and data to the committee chairperson.

During the most recent chart review, participants from each area were selected on a rotational basis by their department heads. Each participant is required to review two charts for completeness, timeliness and accuracy. The performance improvement teams analyze the data from the chart reviews to determine where improvements can be made. An analysis and summary of the findings is distributed to the hospital's division directors and managerial staff as well as to the JCAHO.

Not all RNs are required to perform the chart reviews. Sally Israel, an RN and president of the local hospital negotiations unit, states that it is unclear how the hospital

designates which RNs will perform the review work and that no additional compensation has been provided for that work. Nurses chosen for chart review are given approximately five charts to complete within a quarter.^{1/} She states that charts of long-term patients are sometimes multiple volumes and that JCAHO chart review can take anywhere from one and one-half hours to three or four hours.

Israel also states that the RNs were told to complete the charts during their shifts, but that patient care during their shifts prevents them from doing the reviews. She also states that RNs cannot leave the unit to perform follow-up since there is no relief. Finally, Israel states that practical nurses performed chart audits as part of their duties; the hospital stopped employing practical nurses about two and one-half to three years ago; and the HURC performed this duty for at least five years before the transfer of the assignment to the RNs.

In April 2000, JNESO filed a class action grievance contesting the assignment of medical chart review to floor nurses and alleging a violation of the contract's recognition clause and all other applicable provisions. On April 25, the Director of Patient Services denied the grievance, stating that all nurses are required to participate in the clinical reviews and no contract provisions have been violated. On May 2, JNESO demanded

^{1/} Mitchell's certification states that each participant in the review process is given two charts to review per quarter.

arbitration concerning "assigning work outside job description." This petition ensued.

On August 28, 2000, a JNESO representative wrote to the Hospital's counsel asking questions to "evaluate the impact of the Hospital's proposed change." On January 8, 2001, the County responded. It denied that it redistributed HURC work to staff nurses and states that staff nurses have been doing chart reviews for many years; the hospital has a managerial prerogative to assign these duties to nurses; nurses selected to perform the duties will be required to examine two charts per quarter for a total of eight charts a year; each chart review will take one to one and one-half hours to complete; HURC job duties are not affected; nurses can perform chart reviews when patients are at their day programs, when nurses are on free time, when two nurses are assigned to a unit, or on weekends; and, the hospital will continue to provide orientation programs for nurses selected to complete chart reviews.

Our scope of negotiations 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 contractual merits of the grievance or any contractual defenses the employer may have.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a dispute involving public employees is mandatorily negotiable and legally arbitrable if:

(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. [Id. at 404-405]

There is no preemption issue in this case so we will focus on balancing the parties' interests.

The County asserts that it has a non-negotiable managerial prerogative to require its employees to perform additional duties related to their regular duties and that medical chart review is related to nursing duties. The County contends that the hospital began requiring nurses to participate in the review program to comply with regulatory standards. The County also asserts that it has a managerial prerogative to make assignments based on its assessment of employee qualifications. Finally, the County asserts that HURCs cannot perform these

reviews because they do not care for patients and floor nurses are more qualified to perform the reviews.

JNESO asserts that the transfer of unrelated job duties to a unit position is a mandatorily negotiable term and condition of employment. JNESO asserts that the chart audits routinely performed by RNs involved only a review of records that are to be completed by RNs. JNESO states that the JCAHO chart review is designed to ensure that the entire chart is complete. RNs performing the reviews determine only if the required documents are in the file. JNESO states that there is no assessment by the RN and no patient care involved. The review involves follow-up with other departments and personnel far removed from the RNs' usual activities and having no relation to their patient care responsibilities. JNESO also asserts that the nurses' workload has been increased without negotiations. JNESO points to the County's January 8, 2001 letter which states that the reviews can be performed on weekends or on duty-free time. JNESO contends that compensation and the process for selecting RNs for chart review are legally arbitrable. Finally, JNESO denies that the chart reviews must be completed by professionals who provide patient care.

Public employers generally have a managerial prerogative to require employees to perform duties related to their normal duties. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977); Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268

(¶18110 1987). Any interest employees may have in controlling whether certain work is performed by a particular job title is outweighed by the employer's interest in having the work performed by qualified personnel. In this case, we are convinced that the JCAHO chart review is related to the registered nurses' regular duties and that the hospital's accreditation concerns are a legitimate reason for assigning the review to the floor nurses.

Compensation for performing these and any other duties is mandatorily negotiable. Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992). Compensation claims may arise in different contexts, including extra pay for working in a higher title or for increased workload. See, e.g., Passaic Valley Water Comm'n, P.E.R.C. No. 2001-20, 26 NJPER 439 (¶31173 2000); Cinnaminson Tp. Bd. of Ed., P.E.R.C. No. 99-10, 24 NJPER 419 (¶29194 1998). Having to pay additional compensation, for example, for additional duties performed on weekends would not significantly interfere with the determination of governmental policy. Accordingly, JNESO may pursue through arbitration its claim that floor nurses are contractually entitled to additional compensation for performing these chart reviews.

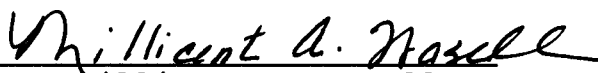
In addition, where all qualifications are equal, the method of assigning additional duties is also mandatorily negotiable and legally arbitrable. See Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp.2d 215 (¶189 App. Div. 1989). If no additional qualification

beyond being a floor nurse is required, the employer would not have a prerogative to avoid any negotiated agreement on how these extra duties would be distributed among qualified nurses. Since the employer has not argued that there are any such extra qualifications, we decline to restrain arbitration over that issue.

ORDER

The request of the County of Essex (Department of Health and Rehabilitation) for a restraint of binding arbitration is granted to the extent the grievance contests the employer's right to assign JCAHO medical chart review duties to floor nurses. The request is otherwise 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: October 25, 2001
Trenton, New Jersey
ISSUED: October 26, 2001