

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and-

Docket No. SN-99-70

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

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the County of Essex for a restraint of binding arbitration of a grievance filed by JNESO, District Council 1, IUOE, AFL-CIO. The grievance contests the transfer of a nurse instructor from the evening shift to the day shift. The Commission concludes that the County had a managerial prerogative to transfer a nurse instructor position from the night shift to the day shift. It finds that the County's interest in improving its educational programs by making more day-shift instruction available outweighs the interest of evening-shift staff in having a nurse instructor available as a resource person. The Commission declines to restrain arbitration over JNESO's allegation that in-person training and education on the evening shift has since been assigned to a non-unit confidential aide rather than to a negotiations unit employee.

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, Catherine E. Tamasik, County Counsel  
(Terriann Moore-Abrams, Assistant County Counsel, on the  
brief)

For the Respondent, Kroll & Heineman, attorneys  
(Raymond G. Heineman, on the brief)

DECISION

On March 17, 1999, the County of Essex petitioned for a  
scope of negotiations determination.<sup>1/</sup> The County seeks a  
restraint of binding arbitration of a grievance filed by JNESO,  
District Council 1, IUOE, AFL-CIO. The grievance contests the  
transfer of a nurse instructor from the evening shift to the day  
shift.

The parties have filed briefs and exhibits and the County  
has filed a certification of the director of patient services for  
the Essex County Department of Health and Rehabilitation. These  
facts appear.

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<sup>1/</sup> On March 29, 1999, the petition was amended to correct the  
name of the respondent.

JNESO represents professional nurses, both registered and with state permit, employed by the County. The parties' most recent collective negotiations agreement is effective January 1, 1992 through December 31, 1995. The grievance procedure ends in binding arbitration.

Article IV is entitled Retention of Existing Benefits and provides, in part:

Except as otherwise provided herein, all rights, privileges, and benefits that the professional nurses have heretofore enjoyed and are presently enjoying, whether County wide or departmental in application, shall be maintained and continued by the County during the term of this Agreement.

Article XVIII is entitled "Staff Development" and provides:

Within the limitations of financial and manpower resources, the employer shall maintain:

1. A planned orientation; and
2. An organized program of in-service education (which shall not be a required responsibility during non-duty hours).

Article XXX is entitled "New Positions" and provides, in part:

In the event the appointing authority creates a new job title within the jurisdiction of this bargaining unit, the Employer shall give thirty (30) days notice to the Association prior to the filling of any position.

June Singleton is a nurse instructor employed at the Essex County Hospital Center. The Center provides inpatient psychiatric treatment to Essex County residents. A nurse instructor is a registered nurse responsible for the education of the Center's staff. According to the director, the instructor

plans, implements and evaluates staff development and continuing education programs for the hospital center staff and consults on educational activities with other departments. The nurse instructor is responsible for orienting new employees to the Center; plans and implements educational programs for nursing staff based on an annual needs assessment; conducts annual mandatory competency programs for all levels of staff; maintains records for all educational programs; arranges educational programs for individuals as remediation to meet performance evaluation requirements; monitors employee progress toward achievement of educational goals; maintains attendance records and evaluations for all educational programs; and provides reports of attendance and the evaluation of programs to managers and supervisors.

Funding for the Center is provided by the federal government, the State, the County and private sources. The Center is required to comply with rules and regulations of various governing bodies to maintain licensure, accreditation and funding. Regulations specify standards in areas such as minimum unit coverage, level of direct nursing care per patient, staffing, planning and administering patient care, and reporting and documentation. These regulations are enforced through frequent inspections by the regulating agencies. Regulations require that one professional nurse be assigned to each nursing unit 24 hours a day, seven days a week.

In February 1998, the director asked each of the four nurse instructors (3 day shift instructors and Singleton, the night shift instructor) to provide a memo indicating the number of classes they were instructing per day and per week, the topics, and the number of students. A review of the memoranda indicated that the night nurse instructor was teaching fewer classes and educating fewer students than any of the day instructors. Thereafter, the hospital made a decision to reorganize the education department. No nurse instructor positions were eliminated, but Singleton's night shift nurse instructor position was moved to the day shift.

On April 9, 1998, Singleton rejected the new schedule and requested a demotion to graduate nurse on the 11:00 p.m. to 7:00 a.m. shift. On April 14, the Union grieved the transfer to the day shift. The grievance alleges that the County violated Articles IV, XVIII and XXX, Section 4, of the contract. It states:

Mrs. Singleton's transfer to days will violate staff development article in JNESO contract, vice-president was not notified of new position and retention of existing benefits.

On May 11, 1998, JNESO filed an unfair practice charge alleging that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally creating the position of charge nurse without negotiations; by refusing to negotiate over the effects of the change in duties; and by unilaterally transferring night shift training duties to non-negotiations unit personnel. The charge also alleges that

the County discriminated against Singleton by refusing her request for a demotion to an available night shift position because of her membership and activities on behalf of JNESO and because she filed a grievance. On September 16, 1999, the Essex County Hospital and JNESO entered into an agreement concerning the portion of the charge relating to Singleton. That agreement states:

JNESO agrees and acknowledges that this settlement shall not be construed as a concession or admission by the County of wrongdoing, or violation of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, JNESO agrees and acknowledges that this settlement shall not be construed as an admission by the County that its offer of a demotional position to June Singleton at her request was intended to discriminate against Ms. Singleton in the exercise of her right to process her grievance.

The County agrees to waive all time limitations as a bar to the processing of the grievance filed by Ms. Singleton (File #EC 004).

The parties agree that the County reserves its right to file a scope petition to restrain arbitration of the aforementioned grievance.

The County further agrees not to raise Ms. Singleton's offer to withdraw the grievance as a bar/defense to the processing of the grievance.

Upon execution of this settlement agreement, JNESO will submit the dispute to arbitration.

On October 5, 1998, JNESO demanded arbitration.

The County maintains that it had a managerial prerogative to reorganize its education department by transferring a nurse instructor position from the night to the day shift. It asserts

that the Center was in danger of losing funding because of low ratings from regulatory agencies and that the education department had to be reorganized to develop and educate hospital staff in an expedited manner. In this vein, the Center's Director of Patient Services certifies that she reorganized the education department to increase the efficiency of patient services and to improve the quality and quantity of educational programs to comply with regulatory mandates. She also sought to increase the variety and availability of education programs by scheduling them when it was convenient for the majority of staff to attend. The County also maintains that it cannot be forced to maintain unneeded and wasteful positions to accommodate the needs of an individual employee.

JNESO asserts that the in-person training and education on the evening shift is now being performed by a non-unit confidential aide, rather than negotiations unit personnel. JNESO maintains that this alleged transfer of Singleton's duties to a non-unit "confidential aide" raises a mandatorily negotiable issue. JNESO further asserts that night and evening shift employees are required to rely on "self-study modules" and that these modules do not comply with contract standards. It states that there is no instructor on the night shift to discuss the modules or answer related questions. JNESO acknowledges that management has the right to determine the subjects to be taught

and the method of training, but maintains that the training should be equalized over shifts so that all employees have an opportunity to obtain education during their shifts.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), contains the standards for determining mandatory 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. [Id. at 404-405]



There is no preemption issue.

Applying this test, we have held that an employer has a managerial prerogative to require training, to select which employees should be trained, and to determine the length and method of training. See, e.g., City of Newark, P.E.R.C. No. 98-154, 24 NJPER 341 (¶29161 1998); Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Monroe Tp. Bd. of Ed., P.E.R.C. No. 93-9, 18 NJPER 428 (¶23194 1992); City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1996); Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986); Franklin Tp., P.E.R.C. No. 86-83, 12 NJPER 98 (¶17037 1985); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985).

Within this framework, we conclude that the County had a managerial prerogative to transfer a nurse instructor position from the night shift to the day shift. JNESO does not dispute that the Center was in danger of losing funding because of low ratings from regulatory agencies; that an improved education program could help correct the problems for which it was cited; that the night shift instructor taught fewer classes and students than day shift instructors; and that it would be more convenient for a majority of the staff to attend education programs if more courses were offered during the day. We find that the County's interest in improving its educational programs by making more day-shift instruction available outweighs the interest of

evening-shift staff in having a nurse instructor available as a resource person.

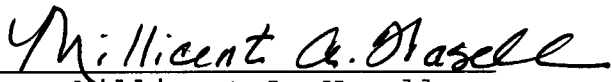
We next turn to JNESO's contention that the assignment of Singleton's night-shift duties to a non-unit confidential aide raises a mandatorily negotiable and legally arbitrable issue. The unit work rule provides that an employer must negotiate before using non-unit employees to do work traditionally performed by unit employees alone. Jersey City v. Jersey City POBA, 154 N.J. 555, 575 (1998). The object is to provide the union with at least an opportunity to negotiate an acceptable alternative, one that would not result in loss of jobs and reduction in union membership. Id. at 576.

We have already found that the County had a managerial prerogative to transfer its educational program and instructor to the day shift. JNESO, however, separately alleges that since that transfer, in-person training and education on the evening and night shifts has been assigned to a non-unit confidential aide rather than to negotiations unit personnel. The County has not replied to that allegation. Absent any articulated governmental policy reason for transferring these duties to non-unit personnel, we decline to restrain arbitration over this allegation. An arbitrator may determine whether the contract protects unit work and whether any such transfer has occurred.

ORDER

The request of the County of Essex for a restraint of binding arbitration is granted to the extent the grievance contests the County's decision to transfer a nurse instructor from the night to the day shift.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: August 26, 1999  
Trenton, New Jersey  
ISSUED: August 27, 1999