

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, COLLEGE OF  
MEDICINE & DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket No. SN-81-18

COUNCIL OF CHAPTERS OF THE  
AMERICAN ASSOCIATION OF UNIVERSITY  
PROFESSORS AT THE COLLEGE OF  
MEDICINE AND DENTISTRY OF NEW JERSEY,

Petitioner.

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STATE OF NEW JERSEY, COLLEGE OF  
MEDICINE & DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-81-19

COUNCIL OF CHAPTERS OF THE  
AMERICAN ASSOCIATION OF UNIVERSITY  
PROFESSORS AT THE COLLEGE OF  
MEDICINE AND DENTISTRY OF NEW JERSEY,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission grants the request of the College of Medicine and Dentistry of New Jersey for a permanent restraint of a grievance which the Council of Chapters of the American Association of University Professors sought to submit to binding arbitration. The grievance challenged CMDNJ's action in depriving a medical school faculty member of laboratory space used by the professor for research, which was not related to any classroom program of instruction. The professor was deprived of the space due to the College's need to renovate the particular space. The Commission finds that the dispute relates to the ability and responsibility of the College to determine how limited resources, such as laboratory space, shall be allocated to the faculty at the medical school, which under the facts presented herein, outweighs the need of medical faculty to engage in independent research in order to enhance their career advancement.

P.E.R.C. NO. 81-113

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Appearances:

For the State of New Jersey, College of Medicine &  
Dentistry of New Jersey, The Honorable John J. Degnan,  
Attorney General of New Jersey (Melvin E. Mounts,  
Deputy Attorney General)

For the Council of Chapters of the AAUP at the  
College of Medicine & Dentistry of New Jersey, Sterns,  
Herbert & Weinroth, P.A. (Mark D. Schorr, On the Brief)

DECISION AND ORDER

On September 26, 1980, the Council of Chapters of the  
American Association of University Professors at the College of

Medicine and Dentistry of New Jersey (the "Council") filed a Petition for a Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination of the negotiability and arbitrability of a matter in dispute with the College of Medicine and Dentistry of the State of New Jersey (the "State" or "CMDNJ"). In its petition, the Council noted that it had voluntarily agreed with the State to stay arbitration until the Commission ruled on the petition. The State filed its own petition concerning the same matters on October 1, 1980. The petitions were consolidated for processing before the Commission.<sup>1/</sup> Briefs were filed by both parties, the last being received on November 25, 1980.

The case involves the negotiability of a grievance submitted by an individual professor in microbiology at CMDNJ. Although the facts necessary to the resolution of the merits of the grievance may be in dispute, there is no disagreement between the parties concerning the factual setting in which the grievance arose, and these facts provide us with the necessary background to decide the scope of negotiations question. The grievance alleges that the professor was improperly deprived of laboratory space in the Medical College which had previously been assigned to him for the purposes of conducting research in his field, the contract is silent with respect to this issue, nevertheless it was alleged to be a violation of the parties' contract.

The CMDNJ asserts, however, that this particular professor was asked to vacate his laboratory to permit renovation of that space and also because he was not engaged in a specific project

<sup>1/</sup> The parties are advised that the same result could have been accomplished by filing a joint petition. N.J.A.C. 19:13-2.1.

at that time which required that he have the laboratory space. Thereafter, the State assigned the professor use of other laboratory space to be shared with another professor.

The grievant alleges that the availability of laboratory space affects his ability to pursue research, grants associated with such research, and merit pay increases based on achievements in research. The State asserts these allegations are speculative in nature and refuses to arbitrate this issue, contending that the assignment of laboratory space "is a managerial prerogative of the College which is inseparable from its educational goals."<sup>2/</sup> The Council urges that the assignment of laboratory space be found mandatorily negotiable since "availability of laboratory space at the College is a significant term and condition of employment closely

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tied in general to work and welfare and in particular to rate of pay.

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<sup>2/</sup> Brief of the State of New Jersey, page 3 (capitalization deleted).

<sup>3/</sup> Brief of the Council at page 5. Both parties briefed the question of whether or not the assignment of laboratory space is within the ambit of the contractual definition of grievable matters. This issue is not addressed herein by the Commission. Instead: "[t]he 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." In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), as cited in Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154, (1978). Nor shall we consider the merits of the grievance itself. Newark Bd. of Ed. and Newark Teachers Union, P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1980), affd. Appellate Division, Docket No. A-2060-78 (1978).

For the reasons set forth below, the Commission determines that the assignment of laboratory space under the circumstances presented is not a negotiable term and condition of employment, and accord-

ingly, may not be submitted to binding grievance arbitration.

The New Jersey Supreme Court set forth the test for establishing the negotiability of a matter in dispute in State v. State Supervisory Employees Association, 78 N.J. 54 (1978) at page 67.

"[N]egotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy." State v. State Supervisory Association, 78 N.J. 54, 67 (1978). The application of this test was further discussed by the Supreme Court in Bd. of Ed. Woodstown-Pilesgrove Regional District v. Woodstown-Pilesgrove Regional Ed. Ass'n, 81 N.J. 582 (1980), in which the Court recognized that a balancing or weighing will frequently be involved to determine if the "dominant issue" or "concern" is the educational or governmental interests of the employer or if the effect on the employees' work and welfare is predominant.

The State does not dispute the significance of faculty research to a professor's life at CMDNJ; however, it asserts that the facts involved herein concern a medical facility with only a limited amount of laboratory space, and the assignment

the State asserts that the educational goals and policies of CMDNJ are the dominant concerns in a decision like this one and in emphasizing the limited facilities and funds available at CMDNJ, the State maintains that "it is crucial that management allocate and assign laboratory space consistent with and in furtherance of such educational goals."<sup>4/</sup>

The Commission determines that under the facts present herein the assignment and allocation of laboratory space is a non-negotiable matter. When the space available is limited, it can only be the responsibility of the College as to how that space will be allocated. This is not to deemphasize the importance of research to a medical professor; however, the assignment of that laboratory space under the set of facts available is not a negotiable item. We consider it to be a managerial prerogative for a medical school to determine how its limited space be utilized, inasmuch as its educational goals and policies may be impermissively impaired when a decision as to assignment is beyond its control.

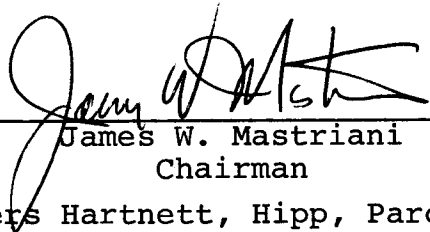
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<sup>4/</sup> Brief of the State of New Jersey, page 5.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that upon the request of the College of Medicine and Dentistry of the State of New Jersey, a permanent restraint to binding arbitration on the issue of the assignment of laboratory space to a member of the Council, is hereby granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Parcels, Newbaker & Suskin voted in favor of this decision. Commissioner Graves voted against this decision.

DATED: Trenton, New Jersey  
April 16, 1981  
ISSUED: April 20, 1981