

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY,

Petitioner,

-and-

Docket No. SN-2005-082

JNESO DISTRICT COUNCIL 1,  
IUOE/AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of proposals made by JNESO District Council 1 IUOE/AFL-CIO for inclusion in a successor collective negotiations agreement with the County of Atlantic. The proposals concern nurses who are working out of title. The Commission concludes that JNESO may negotiate over its proposal that nurses be assigned out-of-title dual assignments only two times per month, but that an employer must be able to ensure adequate coverage in the event of an emergency. The Commission finds that greater restrictions on the right to assign out-of-title supervisory duties are not mandatorily negotiable.

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, James F. Ferguson, County Counsel,  
on the brief

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

DECISION

On May 23, 2005, the County of Atlantic petitioned for a scope of negotiations determination. The County seeks a determination that proposals JNESO District Council 1, IUOE, AFL-CIO seeks to include in a successor collective negotiations agreement are not mandatorily negotiable. The proposals concern nurses who are working out of title.

The parties have filed briefs and exhibits. The County has submitted the certification of Wilton Bennet, the Administrator of the Meadowview Nursing Facility. These facts appear.

JNESO represents full-time, part-time and per diem nurses employed at the County's Department of Public Safety and

Meadowview Nursing Facility. The parties' most recent collective negotiations agreement expired on December 31, 2004. JNESO has proposed contract changes that the employer asserts are not mandatorily negotiable. This petition ensued.

Article 20 of the expired agreement is entitled Working Out of Title/Charge Pay. It provides:

- A. Effective with the ratification of this Agreement, employees who are required by the Employer to perform functions normally assigned to a title which is supervisory and which is outside the bargaining unit, or, if in the bargaining unit, would receive a higher rate of pay, shall receive a differential of one dollar and fifty cents (\$1.50) per hour for the duration of this agreement.
- A.2. In situations when an employee is called upon to act in an out-of-title supervisory capacity coupled with charge responsibility, as hereinafter defined, then the employee shall receive a differential of two dollars and twenty-five (\$2.25) per hour which shall be effective upon ratification of this Agreement and shall continue throughout its duration.
- B. Out of title pay shall be added to the hourly rate after computation of premium pay such as overtime.
- C. In the Division of Public Health, in the absence of the Director and all supervisors, the individual working out of title shall be designated so, in writing. Individuals so designated will be relieved of field responsibility for such period of time.

- D. Charge Pay is defined as the differential paid to a nurse who assumes "Charge".
- D1. In Meadowview Division, charge is defined as a nurse who assumes charge for two (2) halls.
- D2. In Public Health "Charge" is assumed by one nurse in each clinic for all hours worked.
- D3. "Charge" pay for the duration of this agreement shall be seventy-five cents (\$.75) per hour for all hours worked.
- D4 "Charge" Pay shall be maintained for Public Health Clinics for all hours worked.

JNESO proposes to make these changes in Article 20:

- A. No more than two (2) times a month, on any shift, (in total), will bargaining unit nurses be asked to accept the responsibility of charge and out of title work.
- C. In the Meadowview Division, in the absence of the Director and all Supervisors, the individual working out of title shall be designated so, in writing. Individuals so designated will be relieved of charge and staff responsibilities for such period of time. In the Resident Services Division, Meadowview, per diem "pool" RNs will not be designated to work out of title.
- D. Per Diem "pool" RNs will not assume charge.

Meadowview is a skilled nursing facility divided into three, 60-bed units. A supervisor is assigned to each of the three units during the 7:00 a.m. to 3:00 p.m. shift. One supervisor is

assigned to cover all three units during the 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. shifts. The supervisor has responsibility for overseeing registered nurses, licensed practical nurses and certified nurses aides. There is a combination of four RNs and LPNs on the 11:00 p.m. to 7:00 a.m. shift. The day shift is the busiest in terms of patient care and the 11:00 p.m. to 7:00 a.m. shift is the least busy since most of the patients are asleep during that time frame. When the supervisor on the 11:00 p.m. to 7:00 a.m. shift is off, an additional RN is ordinarily assigned to that shift to assume supervisory responsibility in the facility. Bennet states that there will be occasions due to an emergency or sudden call-out when the facility will be staffed by three nurses instead of four. He states that when this situation arises it becomes necessary for an RN not only to be responsible for the unit, but to assume supervisory duties throughout the facility. Bennet states that the contract recognizes this situation and pays those nurses an additional \$2.25 per hour.

The Department of Personnel job specification for Graduate Nurse provides that a graduate nurse "assumes responsibility of unit in absence of nursing supervisor." Bennet maintains that every effort is made to avoid situations where the nurses have to assume a dual role. Between January 1, 2005 and April 30, 2005 (120 days), there were 360 work shifts and seven occasions when a

charge nurse had to assume the dual roles; each occasion arose during the 11:00 p.m. to 7:00 a.m. shift.

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."

We do not consider the wisdom of the proposals in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The County argues that JNESO's proposals would significantly interfere with managerial prerogatives to set staffing levels, deploy personnel, and assign work. It argues that despite the infrequent occurrence of dual assignments, a twice-a-month limit would significantly infringe on its ability to make assignments. It also argues that the proposed change to Section C is inconsistent with the Union's most recent proposed change to Section A and would effectively preclude dual assignments.

As to Section A, JNESO argues that employees may seek to negotiate contractual protection against being required to perform duties outside their job titles and normal duties. It contends that the DOP job specification requires that a graduate nurse assume responsibility for a "unit" in the absence of a nursing supervisor and that, consistent with the DOP job specification, the contract defines a charge nurse as a nurse who

assumes charge for two halls. JNESO maintains that its proposals are intended to limit out-of-title assignments, including the frequency and scope of dual function assignments combining charge and out-of-title supervisory duties. JNESO contends that nurses have an interest in caring for the patients to whom they have been assigned and in not risking charges of patient abandonment for leaving their assigned floors. It argues that its proposal to allow two dual-function assignments per shift each month recognizes the County's interest in being able to respond to emergencies.

As to Section C, JNESO maintains that pool nurses should not be designated to work out of title or as charge nurses and have the attendant responsibilities house-wide as they work less frequently and are less familiar with the functioning of the facility. It also argues that it should be able to negotiate contractual protections against employees being required to assume duties outside their job titles. JNESO asserts that delegation of these duties to pool nurses poses a risk both in terms of patient safety and nurses' continued licensure. The County responds that the proposal would negatively impact on its management rights related to staffing and personnel assignment.

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]

Public employees have an interest in not being required to perform duties outside their job description. See Bloomfield Tp., P.E.R.C. No. 2005-36, 30 NJPER 470 (¶157 2005); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 110-112 (¶28054 1997).

When employees are hired, there is an understanding of the kind and amount of work that will be performed relative to the compensation earned. Any significant deviation in job duties would destroy the balance of the duties-compensation equation. Public employers have an interest in being able to assign a variety of duties to employees in order to provide the myriad of services government must deliver. This Commission and the courts have acknowledged these competing interests in a line of cases recognizing both interests and have tried to find a proper balance. [Bloomfield, 30 NJPER at 472]

Thus, employees generally have a right to negotiate over not being assigned tasks that are unrelated to normal job functions.



In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977) (teachers may not be required to move furniture and do other custodial tasks); Paterson State-Operated School Dist., P.E.R.C. No. 98-29, 23 NJPER 514 (¶28250 1997) (teacher may not be required to perform clerical tasks not incidental to teachers' normal assignments). However, in situations where an employer has added duties, either regularly or occasionally, to jobs held by public safety employees, health care workers, teachers or others in charge of children, our cases have allowed greater managerial discretion to assign duties that, at first glance, may appear unrelated to the employee's normal tasks. See, e.g., Town of Kearny, P.E.R.C. No. 91-42, 16 NJPER 591 (¶21259 1990) (employer not required to negotiate over directive that police drive ambulances and take training to cover for periods of inadequate volunteers); Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992) (teachers required to cover for school nurse during her lunch hour).

Here, the graduate nurses have an interest in not being required to perform out-of-title supervisory work in addition to their regular duties.<sup>1/</sup> The employer has an interest and a responsibility to provide nursing care 24 hours a day, 365 days a

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<sup>1/</sup> The DOP job specification for Graduate Nurse does not require that nurses assume facility-wide supervisory responsibilities while performing their regular nursing duties.

year. Applying the negotiability balancing test to the particular situation presented, we conclude that JNESO may negotiate over the proposed restriction on the employer's ability to require these dual assignments. JNESO argues that two times per month adequately addresses the employer's need to provide coverage in the event of an emergency. That amount approximates the number of times (seven times in three months) that such assignments have been made in the past. Nevertheless, the employer must be able to ensure adequate coverage in the event of an emergency. We will therefore permit negotiations over JNESO's proposal with the understanding that, as with many negotiated provisions, the employer may deviate from that provision to ensure adequate coverage when emergencies arise. See, e.g., Vernon Tp. Bd. of Ed., P.E.R.C. No. 2001-49, 27 NJPER 130 (¶32049 2001).

JNESO proposes to add three new sentences to Section C pertaining to the Meadowview Division and a new sentence to Section D.

JNESO proposes that nurses working out of title in the Meadowview Division shall be so designated in writing and shall be relieved of field responsibility for such period of time. A proposal requiring that an out-of-title assignment be designated in writing is mandatorily negotiable. Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18,

34-35 (1982) (notice requirements are mandatorily negotiable). However, given the round-the-clock nature of the nursing care in that division, and consistent with our discussion above about the employer's reserved right to make dual assignments, we find the remainder of this proposal too restrictive and therefore not mandatorily negotiable.

The proposed last sentence of Section C and the proposed new sentence to be added to section D would bar the assignment of per diem pool nurses to out-of-title positions or charge duties. JNESO says its proposal is prompted by its concern that the County would be giving too much responsibility to employees not suited to handle it and by its desire that the distinctions among job titles and functions be preserved.


JNESO's qualms about the qualifications or credentials of employees who may be assigned to out-of-title or charge duties is more of a managerial than an employee concern. A public employer is not obligated to negotiate over the qualifications of employees it hires or assigns to particular tasks, even where it is alleged that state laws or regulations mandate that jobs be performed by properly licensed workers. See Rutherford Bd. of Ed., P.E.R.C. No. 85-96, 11 NJPER 223 (¶16086 1985) (proposal that teachers be evaluated only by administrators holding proper state certification was non-negotiable). Applying the negotiability balancing test to these proposals, we conclude that

the language pertaining to the use of per diem pool nurses is not mandatorily negotiable.

ORDER

The proposed change in Article 20, Section A is mandatorily negotiable consistent with this decision. The proposed change to Article 20, Section C that requires notice of assignment to out-of-title positions is mandatorily negotiable. The other proposed changes to Article 20, Section C and the proposed change to Article 20, Section D are not mandatorily negotiable.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: July 28, 2005  
Trenton, New Jersey  
ISSUED: July 28, 2005