

P.E.R.C. NO. 94-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-94-30

UNION COUNTY COLLEGE CHAPTER
OF THE AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Union County College Chapter of the American Association of University Professors against Union County College. The grievance asserts that the College violated the parties' collective negotiations agreement when it refused to conduct an election for department chairperson in the Licensed Practical Nursing Department. The College was required by the State Board of Nursing and by N.J.A.C. 13:37-1.2(d)3, to appoint a full-time nursing/administrator. That requirement preempts any negotiations or arbitration over the decision to create the position of Director of the Licensed Practical Nursing Program. The concomitant decision to restructure administrative operations by eliminating the position of nursing department chairperson and consolidating the chairperson's former duties with the director's new duties was taken to comply with the Board's requirements and is within the College's prerogative to determine educational policy.

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Appearances:

For the Petitioner, Yauch, Peterpaul, Clark & Vitolo,
attorneys (Frank J. Peterpaul, of counsel)

For the Respondent, Reinhardt & Schachter, P.C., attorneys
(Paul Schachter, of counsel)

DECISION AND ORDER

On September 24, 1993, Union County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by the Union County College Chapter of the American Association of University Professors ("AAUP"). The grievance asserts that the College violated the parties' collective negotiations agreement when it refused to conduct an election for department chairperson in the Licensed Practical Nursing Department.

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

AAUP represents the College's full-time instructional and professional library staff. The parties entered into a collective negotiations agreement effective from September 1, 1990 to August 31, 1993 and extended until August 31, 1994. Article XX is entitled Departments. Section E1 provides:

Every department shall have a Chairperson who shall be elected in a secret ballot election by the department pursuant to the provisions of Section F of the Article.

Section F specifies how a nomination committee will be created and constituted and how it will function; how the election will be conducted; and how the votes will be counted. The contract also specifies that a chairperson serves two years and must be a department faculty member; and it sets forth a chairperson's duties. Those responsibilities include participating in the evaluation of instructional staff and many non-supervisory duties.

Faculty members are compensated for service as department chairpersons by having their teaching load reduced. They are allowed a reduction of up to 12 credit hours or equivalent contract hours per academic year.

The College offers a Licensed Practical Nursing Program within its Licensed Practical Nursing Department. The program has 39 students and the department has 10 full-time and 11 part-time faculty. Before 1993, Ellen Boddie, then a full-time faculty member, served as department chairperson, a position to which she was elected. Her normal teaching load was reduced by six hours per semester.

The New Jersey Board of Nursing regulates and accredits the Licensed Practical Nursing Program. N.J.A.C. 13:37-1.2(c)(2) i states, in part:

A program shall be placed on conditional accreditation if less than 75 percent of its graduates achieve passing grades in the licensing examination.

In October 1990 and April 1991, less than 75% of the College's graduates who took the licensing examination passed. The Board of Nursing therefore granted the College conditional accreditation and imposed eleven conditions for continued accreditation. One condition was that "a full-time Nurse/Administrator" be appointed to supervise the program. That condition reflects N.J.A.C. 13:37-1.2(d)3, which requires that a qualified nurse administrator have direct authority for the fiscal and academic administration of the program, and the Board's finding that the College was not in compliance with that regulation since the department chairperson was teaching nine hours a week; had only six hours a week for administrative duties; lacked the authority to evaluate faculty job performance; and could be replaced every two years. The Board ordered the College to comply with this condition by January 1993.

The College and Association representatives discussed this condition, but could not agree on how to meet it. On December 23, 1992, the Vice President for Academic Affairs wrote to Boddie and confirmed her appointment as the Director of the Licensed Practical Nursing Program. The appointment was to be effective January 1, 1993 and was to be "an annual twelve-month appointment." The letter

also stated the understandings that the assignment would not require any teaching and that Professor Boddie would institute a faculty peer review system for the nursing program. She was granted a leave of absence from her faculty position.

Once the position of Director was created, the College abolished the previous position of nursing department chairperson. Boddie's classes were reassigned to other faculty members.

On April 14, 1993, AAUP's president wrote a memorandum to the Chair of the faculty. The memorandum stated that there was a vacancy in the position of department chairperson which should be filled as soon as possible. The Chair in turn wrote Boddie asking when the election would be held. AAUP maintained that the College had a right to appoint Boddie as Director, but not to leave the prior department chair vacant. The administration declined to fill that position or to hold an election for that purpose.

AAUP demanded binding arbitration. This petition ensued.

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 do not consider the contractual merits of this grievance or any contractual defenses the College may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), states the tests 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]

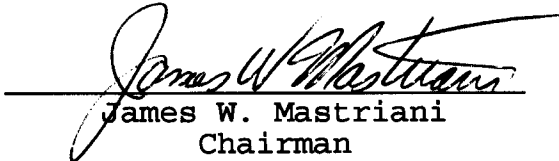
The College was required by the Board of Nursing and by N.J.A.C. 13:37-1.2(d)3 to appoint a full-time nursing/administrator. That requirement preempts any negotiations or arbitration over the decision to create the position of Director of the Licensed Practical Nursing Program. The concomitant decision to restructure administrative operations by eliminating the position of nursing department chairperson and consolidating the chairperson's former duties with the director's new duties was taken to comply with the Board's requirements and is within the College's prerogative to determine educational policy. Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973); Cherry Hill Tp. Bd. of Ed., P.E.R.C. No. 81-90, 7 NJPER 98 (¶12040 1981); Point Pleasant Bor. Bd. of Ed.,

P.E.R.C. No. 80-145, 6 NJPER 299 (¶11142 1980); see also Rutgers, the State Univ., 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993). Accordingly, we restrain binding arbitration.

ORDER

The request of Union County College for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993