P.E.R.C. NO. 89-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and- Docket No. SN-88-88

ESSEX COUNTY LOCAL UNIT OF THE
NEW JERSEY NURSES' ECONOMIC SECURITY
ORGANIZATION OF THE NEW JERSEY STATE
NURSES' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Essex County Local Unit of the New Jersey Nurses Economic Security Association of the New Jersey State Nurses Association against the County of Essex. The grievance alleges that the County violated the parties' contract when it denied the requests of several nurses to take the same day off to attend a vote in the Legislature on a bill to fund county hospitals. Under the unique circumstances of this case, the Commission finds that granting all leave requests would have significantly interfered with the County's abilitiy to run its facilities on the day in question.

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Respondent.

Appearances:

For the Petitioner, H. Curtis Meanor, Acting County Counsel (Lucille LaCosta-Davino, Assistant County Counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak, P.C. (Kenneth I. Nowak, of counsel)

DECISION AND ORDER

On June 24, 1988, the County of Essex ("County") filed a Petition for Scope of Negotiations Determination. The County seeks a restraint of binding arbitration of a grievance that the Essex County Local Unit of the New Jersey Nurses' Economic Security Organization of the New Jersey State Nurses' Association (JNESO") has filed. The grievance alleges that the County violated the parties' contract when it denied the requests of several nurses to take the same day off to attend a vote in the Legislature on a bill to fund County hospitals.

The parties have filed briefs and documents. These facts appear.

JNESO is the majority representative of the County's professional nurses, both registered and with State permit, employed at Essex County Hospital Center, a psychiatric facility in Cedar Grove, and Essex County Geriatric Center in Belleville. Both facilities work on a 24-hour basis with three 8-hour shifts. The County and JNESO have entered into a collective negotiations agreement effective January 1, 1984 through December 31, 1986. In addition to vacation, holidays and sick leave, article 12 grants employees four types of paid leave: administrative, professional, convention and personal.

Between April 29 and May 1, 1988, about 20 employees represented by JNESO requested to take May 2, 1988 as a day off. These employees wanted to be in Trenton for the Assembly's vote on A-2767, legislation granting additional funds to operate the County facilities.[1/] Citing staff shortages, the County denied all requests for leave made by employees who had patient care responsibilities. Three nursing instructors who had no patient care responsibilities were granted leave. Three day shift employees who were denied leave took the day off because the County was unable to notify them in time that their requests for leave had been denied. They were permitted to use their paid leave.

1/ According to JNESO, its representatives were told about the legislation during collective negotiations by employer representatives who said that the nurses' support of the bill would be helpful.

On May 10, 1988, JNESO filed a grievance on behalf of all employees denied requests to take May 2 off. On May 11, the County denied the grievance and JNESO demanded binding arbitration. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

> 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.
> [78 N.J. at 154]

Local 195 IFPTE v. State, 88 N.J. 393 (1982), articulates the test for determining 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]

The County asserts that it had a managerial prerogative to deny the time off requests to employees assigned patient care given the low staffing levels that day. The County has set forth its minimum staff levels; the number of employees and supervisors scheduled to work each shift on May 2, 1988; the number of employees who were scheduled to work but did not report; the number of employees called in on overtime; the number who actually worked, and federally-mandated minimum staff levels.[2/] At the Hospital Center only the day shift met the federal minimums. Even that shift was still below the County's minimum staffing levels. If all requests had been granted, the federal minimums would not have been met. The evening and midnight shifts were below both the federal and County minimums, both as scheduled and as actually staffed. At the Geriatric Center, staffing fell below the County's own staffing levels, but met federal guidelines. Since only two requests from Geriatric Center nurses to attend the vote in Trenton were made and one of those nurses reported to work and then went home sick, granting the other request would have placed Geriatric Center staffing at the federal minimum.

2/ On April 21, 1988, the U.S. Department of Health & Human Services advised the Hospital Center that it did not meet standards for receipt of Medicare funds and funding would be cut off on June 21, 1988. An attempt at correcting the deficiencies still did not suffice to meet federal minimums and funding was cut off.

JNESO does not dispute the County's figures, but asserts that they should have been presented in a "ward and unit" format rather than by shift, and would have shown that some wards and units would have been adequately staffed even if leave requests from those areas had been granted. JNESO seeks an evidentiary hearing to establish the minimum staffing levels, determine whether any or all requests could have been granted consistent with the minimums, and determine whether the County considered staffing requirements on a ward and unit basis before denying the requests. It claims that the time off should be charged to the County and not individuals since the employees were planning to lobby on behalf of the County. It asserts it may arbitrate whether the minimums would have been met had the leave requests been granted.

There are sufficient undisputed facts which obviate the need for an evidentiary hearing. We accordingly deny that request. Based upon the undisputed facts and the particular circumstances of this case, arbitration should be restrained.

Granting and scheduling of leave are negotiable to the extent that they do not infringe upon minimum staffing levels. Edison Tp., P.E.R.C. No., 84-89, 10 NJPER 121 (¶15063 1984); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14, 17 (¶12006 1980). See also City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982). However, Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987) notes that the number of employees permitted to take time off

will not necessarily implicate minimum staffing levels because an employer may schedule more employees than its staff levels require. See also Cape May Cty., P.E.R.C. No. 89-34, 14 NJPER 649 (¶19272 1988). Here the County did not have the ability to schedule more employees than its minimum staffing levels. On at least two shifts at the Hospital Center, the County could not schedule enough employees to meet federal minimums. When leaves were requested, the County had just received notices that it faced the loss of federal revenue because of staff shortages. The leaves were requested on short notice and did not involve time off for employee illness, vacations or regular union business. Under the unique circumstances of this case, granting all leave requests would have significantly interfered with the County's ability to run its facilities on the day in question.[3/]

ORDER

The County's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Ruggiero, and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Smith abstained.

DATED: Trenton, New Jersey
April 28, 1989
ISSUED: May 1, 1989

3/ This grievance does not involve, and we do not decide, whether an employer could rely on staff shortages to deny negotiated leaves when it consistently employs fewer staff than its own minimums require. See Cape May; cf. Elizabeth.