

unit represented by the Merrimack Education Support Staff Association (Staff Association) to the unit of professional employees which it represents, namely "all classroom personnel, librarians, guidance counselors and teaching specialists."

The District filed objections to the Modification Petition on July 31, 1992 after which this matter was heard by the PELRB on October 29, 1992.

FINDINGS OF FACT

1. Merrimack School District is a public employer of teachers and other employees, both professional and non-professional, as defined by RSA 273-A:I X.
2. The Merrimack Teachers Association was "grandfathered" as the certified bargaining agent of a unit consisting of "all classroom personnel, librarians, guidance counselors [and] teaching specialists" on February 12, 1976 pursuant to Chapter 490:3 and PELRB Rule 301.01.
3. The Merrimack Educational Support Staff Association became the certified bargaining agent of a unit consisting of "all permanent full-time and regular part-time employees in the following job classifications: special services aides, library aides, certified occupational therapists assistants, nurses, custodians, maintenance workers, cooks, cafeteria workers and secretarial/clerical employees" on June 13, 1983.
4. Between 1983 and the filing of the Modification Petition in this case, circumstances have changed so that nurses employed by the District now share and have a greater self-felt community of interest with other professional employees, such as teachers, teaching specialists, librarians and guidance counselors, than they do with other support staff, such as secretaries, cafeteria workers, custodians and maintenance workers. Likewise, members of the Association's bargaining unit have experienced and feel a community of interest with the nurses.
5. RSA 200:29 provides that public employers, such as the District, may appoint a school nurse who "shall be a registered professional nurse currently licensed in New Hampshire." (Emphasis added) (See also Code of Administrative Rules, ED 511:16).
6. Principals are responsible for the supervision of both teachers and nurses and evaluate the performance of

both, although on different forms and notwithstanding that teachers are paid on an annual contract basis while nurses are paid on an hourly basis. Both positions participate in the same (teacher) retirement system regardless of the way in which their compensation is calculated. Other support staff personnel do not participate in the teacher retirement system.

7. Nurses positions under consideration in the pending Petition are not "regularly assigned" to teaching duties; however, they do have regular, routine and daily contact with students, parents and teachers, not unlike the levels of professional consultative contacts which occur between guidance counselors, learning resource specialists, learning disabilities specialists, and therapists (all members of the Association's unit) and their clientele, inclusive of both students and parents.
8. Nurses represent the only category of employee in the Support Staff unit which is required to have knowledge acquired in a formal post-secondary program of advanced study and, accordingly, have academic and professional requirements placed on them which are more akin to the Association's bargaining unit than the Support Staff bargaining unit.
9. The professional consultative role of nurses has increased in recent years due to their involvement in such new areas as medical and emotional referrals, drug abuse education, greater emphasis human sexuality education, nutrition education, and education involved with the "mainstreaming" of the student population. Mainstreaming has caused teachers to place more reliance on nurses to identify ailments and syndromes in the student population. Nurses may use the same kind of instructional materials used by teachers, e.g., videos, pamphlets, charts, posters, models, and self-generated materials. Unlike the "patch up, fix up" mode of the past, school nurses are now involved in detecting and educating about chemical dependencies, prescription drug side effects, and dysfunctional home environments. These duties have increased parental contacts. Screening techniques employed are now more complex and more extensive than measuring seeing and hearing abilities.
10. Both nurses and teachers are required to maintain student records (albeit of a different nature), to

consult with parents, to counsel and educate students and to evaluate students, whether educationally or medically; however, nurses issues no "grades" to students, are not required to attend faculty meetings, are not assigned extra duties such as lunch duty or recess, and do not plan general curriculum.

11. Job responsibilities for nurses may involve assessing special needs students, providing individual health education and/or rendering on-side aide, counseling students and parents, dealing with special and/or ongoing health care needs (e.g. diabetic cases, administering medication), and/or referral of medical problems to appropriate specialists for additional attention. While nurses do not spend the majority of their time in a classroom education environment this is also true for other positions in the teachers' bargaining unit, e.g., guidance, therapists, and librarians.
12. There are no distinguishable differences, sufficient to bar inclusion of nurses in the Association's unit, in working conditions inasmuch as both groups have virtually the same work year (185 days for teachers versus 183 days for nurses), the same health insurance entitlement and the same leave benefits. Both teachers and nurses may be involved in scheduling parent conferences.

DECISION AND ORDER

Upon review of our findings, we conclude that school nurses employed by the District now more appropriately belong in the Association's teacher or "professional" bargaining unit rather than in the support staff unit. This conclusion is supported by Appeal of Bow School District, 134 N.H. 64 (1991) and our more recent decision in Goffstown Education Support Staff Association, Decision No. 92-61, April 2, 1992. The facts of this case support our findings that the school nurses now have the requisite "community of interest 'in working conditions such that it is reasonable for employees to negotiate jointly.'" Appeal of University System of New Hampshire, 120 N.H. 853, 855 (1980). Accordingly, school nurses are hereby deleted from the Support Staff unit and placed in the Teachers' unit effective immediately. Compensation and benefits for the affected employees shall remain unchanged until changes therein, if any, are negotiated as part of the negotiations for the next teachers' (Merrimack Teachers Association) contract, it being noted that the CBA's for both bargaining units are set to expire on June 30, 1993.

So ordered.

Signed this 18th day of JANUARY, 1993.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard E. Molan, Esq. present and
voting.