



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SUGAR RIVER EDUCATION ASSOCIATION:	:	
NEA-NEW HAMPSHIRE	:	
	:	
Petitioner	:	
	:	CASE NO. T-0279:15
v.	:	
	:	DECISION NO. 93-71
CLAREMONT SCHOOL DISTRICT	:	
	:	
Respondent	:	

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APPEARANCES

Representing Sugar River Education Association/NEA-NH:

John Fessenden, UniServ Director

Representing Claremont School District:

Theodore Comstock, Esq., Counsel

Also appearing:

John Aubin, S.A.U. 6  
Sarah F. Carter, School District  
John Caldon, S.A.U. 6  
Anne Rouillard, School District  
Joyce Gogan, School District  
Danielle Chadwick, School District

BACKGROUND

The Sugar River Education Association, NEA-New Hampshire, (Association) filed a Modification Petition on January 8, 1993 seeking to place school nurses into the Association's bargaining unit which represents other professional employees, namely, "any individual employed by the Claremont School District, the qualifications for whose position are such as to require him/her to hold an appropriate credential issued by the State Board of Education under its regulations governing the certification of teaching personnel, school librarians and guidance personnel." The recognition clause of the most recent (1989-92) collective

bargaining agreement (CBA) lists as a specific exclusion "non-teaching nurses." By letter of March 18, 1993, Assistant Superintendent Caldon informed the PELRB that the Claremont School Board (Board) unanimously objected to the inclusion of nurses in the same bargaining unit with teachers because (1) they are non-teaching personnel, (2) they are paid on an hourly basis, and (3) some are part-time employees whose benefits vary. The case was thereafter heard by the undersigned hearing officer on May 18, 1993.

#### FINDINGS OF FACT

1. The Claremont School District (District) is a public employer of teachers and other professional and non-professional employees as defined by RSA 273-A:1 X.
2. The Sugar River Education Association is the duly certified bargaining agent for teachers and other professional employees employed by the District. Presently "non-teaching nurses" are specifically excluded from this certification.
3. Minimum qualifications for school nurses (District Ex. No. 2) include: (1) valid state license as registered nurse, (2) certificate as public school nurse and/or any other certificate required by the State of New Hampshire, (3) three years of experience in public health nursing, and (4) have or be in the process of acquiring a B.S., preferably in nursing or in other school health related matters."
4. Nurses are compensated on both an hourly rate (ranging from \$12.25 to \$16.54 per hour) and an annual rate (ranging from \$4708 to \$25,137 per year). Both rates are set forth on their respective letters of agreement as is the length of their work year, reflected as 190 days, 36 weeks, or 38 weeks, respectively. Teachers are employed at an annual rate and for 185 days per year. (District Ex. Nos. 3 and 5)
5. Work schedules of the four school nurses vary, from 10, 20, 30 or 40 hours per week and from as long as 7:30 am to 3:30 p.m. to as short as five hours per day. Work hours are roughly equivalent to those of teachers with whom the nurses have contract on a daily basis. Nurses must remain on the school grounds throughout their shifts. Teachers are not required to do

so. All but one nurse are excluded from extra duties. Teachers are not excused from extra (hall, bus, cafeteria, etc.) duties.

6. Nurses are part of the high school student service team along with the principal, psychologist, special education, guidance and administrative personnel. They attend faculty meetings along with teachers and other professional personnel as well as serving on individual educational program (IEP) teams.
7. The job description for nurses, dating to 1986 (District Ex. No. 2) contemplates that they perform functions broader than applying band aides and maintaining health records. They are to assist parents in childrearing, developmental crises, common illnesses, accidents, sexual abuse matters, dental health and nutrition. It is anticipated that they have on-going communications with students, parents, teaching staff, physicians, dentists and other health related personnel. They are expected to act as resource personnel "in implementing a comprehensive health instruction curriculum" and must be available to counsel students in health, nutrition, pregnancy, substance abuse, child abuse and neglect. (Emphasis Added)
8. 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 resourcespecialists, and learning disabilities specialists, (all members of the Association's unit) and their clientele, inclusive of both students and parents.
9. Nurses, as well as teachers, are responsible for their "own professional growth including those requirements for staff development." (District Ex. No. 2) This is an academic and professional requirement akin to maintaining certification for teachers.
10. 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, 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 in the past.

11. 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 issue 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.
12. Job responsibilities for nurses may involve assessing special needs students, providing individual health education and/or rendering on-site 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 and librarians.
13. There are inconsistencies in benefits provided to nurses, e.g., they may have the same holidays as defined by the teaching calendar or no holidays, depending on their scheduled hours per week. Likewise health/dental insurance benefits and the accrual of sick leave vary depending on the scheduled number of hours per week. Nurses who accrue sick leave have access to the teachers' sick leave bank and also may contribute to it.
14. The 1989-92 CBA is continuing by extension

for the 1992-93 school year. Notwithstanding attempts to modify the recognition clause for a subsequent CBA, there is no evidence that either side agreed to waive its right to pursue this issue to the PELRB or that this effort was abandoned by the Association as a specific quid pro quo for an offsetting benefit.

#### DECISION AND ORDER

It has been common practice for school nurses to be placed in bargaining units with teachers since the state Supreme Court issued Appeal of Bow School District, 134 N.H. 64, in 1991. The professional characteristics and responsibilities of school nurses have changed conspicuously over the past few years as evidenced not only by the foregoing findings but also by the testimony offered to the hearing officer. As was the case with the Bow School District, the Claremont District seeks the exclusion of "non-teaching nurses." This argument must fail for two reasons. First, there is ample evidence that school nurses in Sugar River do, in fact, teach, although they may not do so with the frequency or formality of classroom teachers. Second, the court in Bow (134 N.H. 61 at 67) said, "[W]e are unpersuaded that the inconsistencies alleged by the district represent anything more than the PELRB's properly exercising its responsibility to determine the appropriate composition of bargaining units, and we find no compelling reason to limit that discretion within a fixed rules."


"The PELRB must have the discretion in each case to survey several factors in determining whether a particular school nurse position is appropriately included in the teachers' bargaining unit." (134 N.H. 64 at 69). Findings No. 7, 10 and 11 are sufficient by themselves to warrant inclusion in the teachers' bargaining unit. A change in work requirements "reflecting the need for more daily contact with teachers, students and parents, could constitute a change in circumstances sufficient to permit a school nurse to be included in the teachers' bargaining unit because the PELRB could reasonably determine that it intensified the community of interest between the school nurses and the teachers." (134 N.H. 64 at 72) Such is the case here.

The foregoing increasing intensity of the community of interest between the teachers and the nurses is further supported by similarity in work day and work locations. RSA 273-A:8 I (a) and (b). In some instances, nurses actually are on premises longer and in a more restrictive capacity than applies to teachers. At least two of them will experience an increase in work hours in the 1993-94 school year. Two others (Gogan and Rouillard) have individual contracts which tie certain benefits (e.g., holidays and health insurance) "as per teacher contract."

Given duties, responsibilities, interaction with teachers' bargaining unit members, role in the educational community, inclusive of pupils and parents, self-felt community of interest and consistent with the PELRB's holdings in Merrimack Teachers Assn. (Decision No. 93-02 January 18, 1993) and Goffstown Educational Support Staff Assn., Decision No. 92-61 (April 2, 1992), there is insufficient rationale or justification to warrant exclusion of the nurses from the teachers bargaining unit. To the contrary, they have made a compelling argument for inclusion in that unit. They shall be so included.

So ordered.

Signed this 15th day of June, 1993.

  
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PARKER DENACO  
Hearing Officer