



FINDINGS OF FACT

1. Merrimack County is a public employer within the meaning of RSA 273-A:1 X and employs workers in a variety of jobs to operate its nursing home.
2. The County objects to the proposed bargaining unit which is limited to three positions, by contending that all nursing home employees are part of an interdependent homogeneous residential community providing services to a resident population and that resident care will suffer if a division is created between unionized and non-unionized employees by permitting the organization of some, but not all, eligible employees. It suggests that the bargaining unit include 39 additional positions for which job descriptions were received on December 10, 1993.
3. At the hearing on December 7, 1993, the Union expressed willingness to amend its petition to include some of the 39 positions. It contends that direct caregiver positions, all of whom work at the same facility under the same administration and attend to the needs of the same elderly population, share a natural community of interest in their working conditions and so should be able to bargain together.
4. The uncontested categories (registered nurse, licensed practical nurse and certified nursing assistant) include three supervisory positions held by registered nurses: two shift supervisors and a nursing supervisor. All three supervisor positions involve direct patient/resident care in emergency situations or for routine care of acutely ill residents. They also oversee the nursing staff. None of the three supervisory positions exercises significant discretion in personnel matters under RSA 273-A:8 II. Each is in the role of lead worker among nursing professionals.
5. There are two categories of charge nurse, one of which is reserved for registered nurses. Both positions provide professional nursing care and act as lead workers for teams of certified nursing assistants.
6. The position of certified nursing assistant provides a wide variety of non-professional services required in the care of residents and their surroundings.
7. The additional job classifications urged by the County include:

Social Worker	Psychiatric Social Worker
Barber	Beautician
Unit Clerk	Sterilization Technician
Secretary/Nursing	Administrative Asst./Nursing
Pharmacy Assistant	Pharmacy Technician
Certified Occupational Therapy Assistant	Occupational Therapy Aide
Activities Aide II	Activities Aide I
Dietitian	Cook
Secretary/Dietary	Tray Line Supervisor
Kitchen Aide II	Kitchen Aide I
Coordinator of	Account Clerk
Volunteer Services	Secretary/Administration
Transportation Asst/ Courier	Receptionist II
Computer System Tech.	Receptionist I
Stock person	Materials Coord.
Maintenance Worker III	Purchasing Asst.
Watchperson	Maintenance Worker I
Laundry Aide II	Maintenance Worker II
Laundry Aide I	Administrative Asst. - Plant Operations
Housekeeper I	Floor Maintenance Worker

8. The job descriptions indicate that the positions of Social Worker and Psychiatric Social Worker involve much interaction with residents; The Social Worker makes daily rounds of residents' living units, maintains contact with families of residents' and with other care givers. Social workers obtain and keep social histories of each resident. The Psychiatric Social Worker maintains a case load, does mental health assessments and counsels residents and their families.
9. Both the Certified Occupational Therapy Assistant and the Occupational Therapy Aide work directly with residents helping them maintain or increase their physical functioning through a variety of duties. Both report to the Registered Occupational Therapist. The Occupational Therapy Aide provides assistance to the Certified Occupational Therapy Assistant in carrying out therapy with residents.
10. The Barber and the Beautician provide hair care and other grooming assistance, a form of direct care. They report to the Director of Nursing.
11. Both the Activities Aide I and Activities Aide II report to the Activities Director. Generally, the duties of these two positions include planning, instructing and supervising recreational activities such as sports, dancing, games, dramatics, crafts, shopping days, movies and the operations of the

gift store and the production of a community news letter.

12. The Admissions Secretary interviews residents and families to develop a profile as part of the pre-admission process. This position performs such functions as assisting residents with Social Security or Veterans Administration interactions.
13. The Unit Clerk monitors activities in the unit, by helping residents with telephone calls, marking residents possessions, and monitoring smoking, cash and supply requisitions by residents.
14. The Transportation Assistant/Courier works under the supervision of the Office Manager in transporting residents to outside appointments and assisting residents while waiting for medical and other appointments. This position deals directly with residents by doing banking and shopping tasks for them.
15. Of the 39 additional positions for which job descriptions were provided by the County, the remaining positions do not interact with residents in more than an incidental way. The position of dietician is not addressed here since the County has indicated by letter of December 10, 1993, that the position is now filled through outside contract rather than by an employee. The County's additions to the list proposed at the hearing include Admissions Secretary and Medical Records Secretary.

#### DECISION AND ORDER

The dispute between the parties is essentially whether a wall-to-wall bargaining unit or a role-limited bargaining unit is appropriate for the staff of the Merrimack County Nursing Home. The Union proposes a unit fashioned of 3 specific direct caregiver positions held by 182 workers but is willing to expand the unit to other caregiver positions. It objects to a unit inclusive of all employees, nursing supervisor and night watchperson alike. The law favors a unit encompassing a large number of positions but bound in a community of interest with an end toward reasonable negotiations. University System of New Hampshire v. State of New Hampshire, 117 N.H. 96, 99-100.

RSA 273-A:8 governs the certification of bargaining units. Therein, the legislature has set down four criteria which are to be considered in determining the existence of a community of interest:

- (a) Employees with the same conditions of employment;

- (b) Employees with a history of workable and acceptable collective negotiations.
- (c) Employees in the same historic craft or profession;
- (d) Employees functioning within the same organizational unit.

Three of the four criteria, (a), (c) and (d), support establishing a bargaining unit made up of caregiving positions with (a) and (c) applicable only to a unit of caregivers whose tasks and duties appear similar since they focus on addressing the physical and emotional needs of a homogeneous population. Their work schedules are dictated by the schedules of that population. While not all the named positions are exclusively and historically within the profession of nursing, those positions which come in contact with residents with regularity must be filled by employees who possess many of the qualities characteristic of nurses, as evidenced by the description of the position of barber. The barber must be capable of grooming "individuals who are resistant or even belligerent...." and so must possess personality traits such as persistence and compassion common to nurses and other caregivers. These positions all share common concerns focusing on the residents' wellbeing.

Therefore, the bargaining unit appropriate in this case shall include all positions within the uncontested categories of Registered Nurse, Licensed Practice Nurse and Certified Nursing Assistant. Also included are the Social Worker and Psychiatric Social Worker positions, the Certified Occupational Therapy Assistant and the Occupational Therapy Aide, the Beautician and the Barber positions, the Activities Aide I and II, the Admissions Secretary, the Unit Clerk and the Transportation Assistant/Courier. The remaining positions sought by the County have not been shown to share the direct caregiver functions which are at the core of the community of interest. Nothing contained herein is intended to suggest that those employees occupying non-caregiver positions cannot petition for the formation of a bargaining unit separate from that which is hereby established.

So ordered.

Signed this 17th day of JANUARY, 1994.



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PARKER DENACO  
Hearing Officer