



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SULLIVAN COUNTY NURSING  
HOME

Petitioner

CASE NO. A-0491:12

v.

DECISION NO. 96-009

AFSCME COUNCIL #93,  
LOCAL 3438

Respondent

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#### APPEARANCES

##### Representing Sullivan County Nursing Home:

Marc Hathaway, Esq.

##### Representing AFSCME #93, LOCAL 3438:

James C. Anderson, Staff Rep.

##### Also appearing:

Howard Tawney, Sullivan County  
Robert Hemenway, Sullivan County  
Elizabeth Vioski, Local 3438

#### BACKGROUND

Sullivan County (County) filed an unfair labor practice charge against AFSCME Council #93, Local 3438 (Union) on July 12, 1995, alleging a violation of RSA 273-A:II (f) for grieving matters which were previously agreed to by the parties or in the alternative, which were reserved by contract to be management's prerogative and for filing the grievance in an untimely fashion. The Union's only

response, a request for an extension of time to submit an answer, was received on July 27, 1995. Hearings were scheduled and continued on September 7, 1995, November 1, 1995, and December 13, 1995. The matter was heard before the undersigned hearing officer on January 24, 1996.

#### FINDINGS OF FACT

1. Sullivan County employs registered nurses and licensed practical nurses in the operation of the Sullivan County Nursing Home and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME Council #93, Local 3438 is the duly certified bargaining agent for nurses and other personnel employed at the Sullivan County Nursing Home.
3. A collective bargaining agreement (CBA) for the period, July 1, 1994 through June 30, 1997, was signed by the parties on August 8, 1994.
4. Article II of the CBA is entitled Management Clause. It reads:

Except as specifically limited or abridged by the terms of this Agreement, the management of the Sullivan County Nursing Home in all its phases and details shall remain vested exclusively in the Employer and its designated agents. The Employer and its agent shall have jurisdiction over all matters concerning the management and operation of said Facility, including, but not limited to, the functions, programs and methods to be used for all of the operations of said Facility, including the use of technology, the Facility's organizational structure and the selection, direction and number of all personnel so as to continue public control of governmental functions as well as all rights retained by virtue of New Hampshire RSA Chapter 273-A. It is further specifically agreed that this Article shall not be subject to the Grievance Procedure Article as hereinafter set forth.

5. An amendment to the wage provision of the CBA was signed on September 15, 1994. The one page amendment reads in pertinent part:

Effective August 29, 1994, Licensed staff passing medications at the Department of Corrections during their shift shall be compensated an additional \$10.00 per shift.

6. Prior to a change in policy, which occurred during the summer of 1994, medications for inmates were prepared by a nurse who worked at the correctional facility. Medications were then administered by correctional officers. In cases of emergency, which occurred once or twice a month, Nursing Home nurses would be called to the correctional facility, also on county grounds, to prepare and administer medications to prisoners.
7. By vote of the county commissioners, correctional officers were no longer allowed to administer medications to prisoners. Nursing Home Administrator Robert Hemenway was instructed to assign licensed staff on a regular basis to be present when the correctional nurse was absent to administer medications and to evaluate inmates' illnesses and injuries.
8. Robert Hemenway testified that the County recognized the need to negotiate the impact of the commissioners' decision. He, Howard Tawney and representatives of the bargaining unit sat down and worked out an agreement (See Finding #3) which was signed by the commissioners and the President of Local 3438. Mr. Hemenway acknowledged that the evaluation aspect of the assignment had not been the subject of bargaining.
9. In the past, accepting the emergency assignment to the correctional facility was optional. No one has yet been assigned against his/her will but the duty must be covered. However, orientation training has begun and four or five staff members refuse to participate in the orientation at the Sullivan County House of Corrections despite the change in policy.
10. The House of Corrections is located about 500'

from the Nursing Home on the same grounds. The nursing office at the correctional facility is within view of the security control center near the administrative offices. It is not in the inmates' area. Guns are prohibited in this secure facility and a correctional officer always accompanies an inmate on a visit to the nurse.

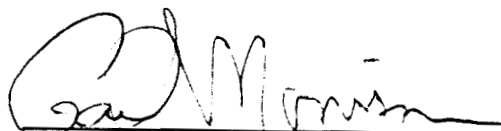
#### DECISION AND ORDER

The choice to assign nurses to the correctional facility resulted from a policy change made by the county commissioners. The authority to make such a change is reserved to the employer under the management clause of the CBA and the managerial policy clause of the statute, RSA 273-A:1 XI. Appeal of Watson, 122 N.H. 664, 667 (1982). A change in policy often affects terms of employment. Then, the need to bargain the impact on wages, hours and other conditions is implicit.

The Union did not argue that the new assignment was hazardous or otherwise unreasonable. The Union insists that bargaining the change is ongoing. Yet, testimony and the alignment of the facts make apparent that the policy change gave rise to bargaining for the addendum to the wage term of the collective bargaining agreement and that bargaining on the assignment to the correctional facility and the extra duty of administering medications is complete. The Union is to cease and desist pressing for bargaining since no further bargaining is necessary on that portion of the change. The County is directed to bargain the impact of the remaining matter, the additional duty of evaluating the illnesses of inmates at the Sullivan House of Corrections.

So ordered.

Signed this 27th day of February, 1996.

A handwritten signature in dark ink, appearing to read 'Gail C. Morrison', written over a horizontal line.

Gail C. Morrison  
Hearing Officer