



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CONTOOCCOOK VALLEY SCHOOL	:	:
DISTRICT, SAU #1	:	:
	:	:
Complainant	:	:
	:	:
v.	:	CASE NO. T-0275:12
	:	:
CONTOOCCOOK VALLEY EDUCATION	:	DECISION NO. 97-026
ASSOCIATION, NEA-NH	:	:
	:	:
Respondent	:	:
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APPEARANCES

Representing Contoocook Valley School District:

John H. Vetne, Esq.

Representing Contoocook Valley Education Association:

James Allmendinger, Esq.

Also appearing:

- K. R. Burke, Conval District
- Larry Bramblett, Conval District
- Mary E. Gaul, NEA-New Hampshire
- James P. Sweeney, Conval Education Association
- Jonathan Manley, Conval Education Association
- Joan Lund, Conval Education Association

BACKGROUND

The Contoocook Valley School District, SAU No. 1, (District) filed unfair labor practice (ULP) charges against the Contoocook Valley Education Association, NEA-NH (Association) on October 24, 1996 alleging violations of RSA 273-A:5 II (d) and (f) caused by the Association's attempting to grieve on behalf of a non-

bargaining unit employee, namely, a nurse without teaching certification. The Association filed its answer on November 12, 1996 after which this matter was heard by the PELRB on January 23, 1997.

#### FINDINGS OF FACT

1. The Contoocook Valley School District/SAU #1 is a "public employer" of teachers and other personnel within the meaning of RSA 273-A:1 X.
2. The Contoocook Valley Education Association, NEA-New Hampshire, is the duly certified bargaining agent for teachers and other personnel employed by the District.
3. The District and the Association are parties to a CBA for the period July 1, 1996 through June 30, 1998. The prior contract ran from July 1, 1993 to July 1, 1996. Article I thereof is entitled "Recognition" and recognizes the Association as exclusive representative for "full and part-time professional employees...including individuals... the qualifications for whose position are such as to require him or her to hold an appropriate credential issued by the State Board of Education." The Superintendent, Assistant Superintendents, Principals, Assistant Principals, Teaching Principals, Business Administrators and all other employees of the District/Board are excluded.
4. On June 18, 1996, the District posted a position vacancy announcement for a school nurse position at South Meadow School. Duties involved wellness education, dispensing medications, first aid, health screening, health record keeping, immunizations and daily attendance calls. Registered nurse (RN) licensure was required. Superintendent Larry Bramblett testified that this was to be a "medical nurse" position, contrasted to a "nurse teacher" position such as those currently represented by nurses in the bargaining unit and paid in accordance with the teachers' salary schedule.
5. Superintendent Bramblett also testified that current school nurses, covered by the CBA, are generally BOE certified as educational specialists with a school nurse endorsement, per a 1973 job description

generated during the tenure of former Superintendent Page. (ULP, Attachment, p. 13.) A two-page document (ULP, Attachment, PP. 16-17) entitled "School Nurse-Role Description" is the current job description for nurses now employed and covered by the contract. There is no job description which distinguishes between "medical nurses" and "nurse teachers." Of four currently employed nurses, he said two have teaching responsibilities, two do not. One of them is an RN only, without BOE certification but she is covered by the CBA and considered in the bargaining unit.

6. Sometime between the posting of the 1996 position vacancy on June 18, 1996 and June 21, 1996, the Association came to understand that the school nurse position vacancy (Finding No. 4) was to be paid on an hourly basis. On June 24, 1996, James Sweeney, Association president, filed a grievance objecting to this manner of compensation, citing violations of Articles 1-1, 1-3, 2, 7-1 and 13. Superintendent Bramblett denied the grievance on July 1, 1996, saying the CBA did not create or delete jobs. "Only the Board has that authority. The contract does not address this issue." Thereafter, the school board also rejected the grievance. The Association filed a demand for Arbitration with the American Arbitration Association on September 13, 1996. The District brought this ULP to stop further processing of this grievance on October 24, 1996.
7. During negotiations for the 1996-98 CBA, the Board proposed a language change to the Recognition Clause. If adopted, it would have recognized professional employees "who are classified by the Board as teachers, instructional assistants or aides." (Association Exhibit No. 2.) According to teacher negotiator Jonathan Manley, the fact that the proposal might have eliminated guidance personnel and nurses from CBA coverage and implemented an hourly rate schedule caused concern in the bargaining unit. Ultimately, the language remained unchanged from the prior 1993-96 CBA.
8. Negotiator Manley and Joan Lund both testified on behalf of the Association that nurses had been on the teachers' pay schedule since 1975. Lund started classroom teaching in 1990 with three classes a day.

Coincidentally, she also had a homeroom and served as an advisor. She identified Association Exhibit No. 3 as her job description.

9. Notwithstanding claims by the Board that the instant grievance violates Article 3-1 of the CBA because there is no claim of "a personal loss, injury or inconvenience" to a bargaining unit member, there is evidence to the contrary. First, it impairs the ability to transfer to another building because of the compensation loss associated with an hourly wage schedule, e.g. the Manley testimony relating to Nurse Ansaldo's having to withdraw a transfer request. Second, Articles 3-10 and 3-11 permit representation and/or participation by the Association. Third, the history of dealing between the parties shows that the Association has filed, had accepted and processed grievances concerning postings and rates of pay without a named individual grievant. (Association Exhibit Nos. 4, 5 and 6.) Meanwhile, four nurses have sought to be accorded "grievant" status for this case. (District Exhibit No. 2.)

#### DECISION AND ORDER

Our role in this case is a limited one, namely, to determine whether the Association should be permitted to continue the processing of its grievance to arbitration. This leaves a collateral and unaddressed issue relative to the placement of the "new" nurse position, i.e. whether it is in or out of the bargaining unit. This issue is appropriately addressed by a modification petition, yet to be filed, whether consensually or as the result of a hearing. Rule PUB 302.05. We note that heretofore nurses have been permitted in bargaining units with teachers, as professionals, without regard to whether they possess BOE credentials in addition to their RN certification. See Appeal of Bow School District, 134 N.H. 64 (1991).

Article III of the CBA defines a "grievance" as "a claim by a member of the bargaining unit that there has been to him/her a personal loss, injury or inconvenience because of a violation, misinterpretation or inequitable application" of any of the provisions of the agreement. The Association appears to have satisfied that requirement both because of the petitioners for "grievant status" (District Exhibit No. 2) as well as the history of grievance handling and processing as evidenced by Association Exhibit Nos. 4, 5 and 6. For that matter, the grievance

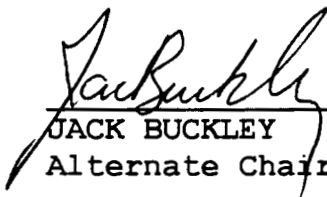
signatory, Association president James Sweeney, is a bargaining unit member who may have a personal as well as an associational claim for relief.

In order for the District to prevail in its attempt to preclude the Association's processing this case to arbitration, it must be said with "positive assurance" that the CBA cannot be read to cover the dispute. With the "positive assurance" test, when a CBA contains an arbitration clause, "a presumption of arbitrability exists." In Appeal of Westmoreland School Board, 132 NH 103 (1989), the New Hampshire Supreme Court cited Steelworkers v. Warrior and Gulf NAV. Co., 363 U.S. 574 (1960) for the proposition "in the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." Given a negotiated contract grievance procedure, the definition of a grievance, the standing of the four petitioners represented on District Exhibit No. 2 and the parties' history of grievance processing, we cannot conclude that the District met the quantum of persuasion required in the positive assurance test. Thus, the presumption controls and the parties must proceed to arbitration.

The ULP is hereby DISMISSED and the parties are directed to comply with the arbitration provisions of their contractually agreed upon grievance procedure, noting that this relief is intended only for bargaining unit members and that the new "medical nurse" has not yet been determined to be a bargaining unit member.

So ordered.

Signed 5th day of March, 1997.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members E. Vincent Hall and William Kidder present and voting.