



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL CHEMICAL WORKERS
UNION COUNCIL

Petitioner

and

HILLSBOROUGH COUNTY NURSING HOME

Respondent

CASE NO. M-0764

DECISION NO. 1999-079

APPEARANCES

Representing International Chemical Workers Union Council:

John Mendolusky, Representative

Representing Hillsborough County Nursing Home:

Carolyn Kirby, Esq., Counsel

Also appearing:

Lisa Young, RN, ICWU
Sandra Kinsey, RN, ICWU
Margaret Coughlin, Hillsborough County
Rosmarie Krosch, Hillsborough County
Bruce Moorehead, Hillsborough County

BACKGROUND

On April 7, 1999, International Chemical Workers Union Council/UFCW (Union) field a petition to certify a fifteen (15) member bargaining unit of middle management and supervisory personnel employed at Hillsborough County Nursing Home. On April 22, 1999, Hillsborough County Nursing Home (County) filed its exceptions. A hearing on the matter was held before the undersigned hearing officer on July 23, 1999. Briefs were filed on August 9, 1999.

FINDINGS OF FACT

1. Hillsborough County employs nurses and other personnel in the operation of its nursing home at Grassmere and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. International Chemical Workers Union Council seeks to become the exclusive bargaining representative of a bargaining unit at Hillsborough County Nursing Home to consist of the following nine (9) job classifications:
 - head nurse (6)
 - hospice administrator (1)
 - staff development coordinator (2)
 - shift supervisor (2)
 - assistant director of restorative services (1)
 - hospice volunteer coordinator (1)
 - clinical behavior therapist (1)
 - facility maintenance supervisor (1)
 - housekeeping supervisor (1)
3. The head nurse position is a professional position that provides twenty-four hour management of a fifty bed unit and also gives direct care to residents. The head nurse position reports to the assistant director of nursing. (Union Exhibit No. 7). There are seven head nurses, including the hospice administrator. Every seventh weekend, head nurses come in to oversee the functioning of the facility including the maintenance and housekeeping personnel in the absence of the facility maintenance supervisor and the housekeeping supervisor. The head nurses are a part of the clinical team. They also attend regularly held meetings with the assistant and associate directors of nursing and staff development coordinator.
4. The 11 to 7 shift supervisor, (Union Exhibit No. 5a), and the 3 to 11 shift supervisor, (Union Exhibit No. 5b), also are accountable to the Assistant Director of Nursing. Shift supervisors provide direct supervision to staff and perform evaluations of subordinate nursing staff in consultation with head and charge nurses. These positions have full responsibility for the operation of the facility when on duty. They may call in staff as needed, including head nurses who are not scheduled to work.
5. An AFSCME bargaining unit, (noted Case No. A-0426), for non-supervisory personnel is in place at the Hillsborough County Nursing Home. It is certified to represent positions such as certified nursing assistants and certain nursing positions, office personnel,

maintenance workers, physical and occupational therapy aides and dietary staff. The shift supervisor interprets and follows the union contract in carrying out her personnel duties according to the job description. (See Finding No. 4.)

6. The hospice administrator is in charge of the Hillsborough County Hospice Program and reports to the administrator of the facility. This position is a member of the hospice interdisciplinary team but also supervises the personnel who compose that team according to the job description provided. (Union Exhibit No. 2.) Assistant Director of Nursing, Margaret Coughlin corroborated that the hospice administrator has complete responsibility for the hospice program and all who work in it. Sandra Kinsey, who holds the hospice administrator position, testified that she does not direct, discipline, recommend discipline or have authority to fire the hospice volunteer coordinator. Despite the volunteer coordinator's job description, Union Exhibit No. 3, which indicates that the position reports to the hospice administrator, Kinsey testified that the only supervisory task she performs for the volunteer coordinator is notifying her of meetings of the volunteer board.
7. The position of hospice volunteer coordinator, also called volunteer services coordinator has been combined with the position of assistant director of restorative services, which position reports to the director of restorative services as reflected in the job description for assistant director of restorative services. (Union Exhibit No. 4.) The director of restorative services is not a potential bargaining unit position.
8. The clinical behavioral therapist is a member of the clinical team. This position both works with other staff members and provides direct care to residents. Testimony from Sandra Kinsey was that this position reports to no one, but the job description designates the head of the social services department as the supervising authority. (Union Exhibit No. 6.) The clinical behavioral therapist supervises no other potential bargaining unit employee but works with and provides direction to all staff concerning residents' mental health needs.
9. The staff development coordinator attends head nurses' meetings, is in charge of orientation of new staff and relates to staff as the provider/coordinator of professional training for the nursing staff. This position reports to the Director of Nursing. (Union Exhibit No. 10.) Head nurses, shift supervisors and the staff development coordinator are all R.N. labor grade 21 positions. This position is engaged in teaching but not

supervising, regular staff including potential bargaining unit members.

10. The housekeeping supervisor and maintenance supervisor positions are a lower in labor grade than the other supervisory positions discussed reflective of the fact that they are not state licensed professionals. They are not part of the clinical team and do not attend the same professional meetings as the head nurses and others. However, they relate to other supervisory and management personnel sharing a common concern for residents. They supervise employees of their respective departments. Both positions are in charge of aspect of residents' environments.
11. Some positions requested for bargaining unit inclusion belong to the historic recognized profession of nursing. Others do not. All are part of the nursing home community with its special requirements for all employees such as blood tests and safety courses. All positions requested are located within the same facility. They share a common employer and work under the same personnel policies and receive benefits offered by the county. All positions relate to other staff around the subject of maintaining a homelike comfortable environment for residents.

DECISION AND ORDER

The legislative mandate of the Public Employee Labor Relations Board includes the determining of bargaining units. RSA 273-A:8 charges the PELRB with responsibility for deciding whether a public employee collective bargaining unit is appropriate for certification, and, if so, the composition of that bargaining unit. Each bargaining unit is to be reviewed on its own circumstances on a case by case basis. Appeal of Town of Newport, 140 N.H. 343, 352 (1995). The circumstances presented through testimony and documents are to be examined considering both statutory and regulatory criteria, RSA 273-A:8 I and Pub 302.02. The ultimate question is whether there is a sufficient community of interest among the bargaining unit positions so that it is reasonable for them to negotiate together. *Id.* citing Appeal of the University System of New Hampshire, 120 N.H. 853 at 855 (1980).

The County objects to the proposed unit on three bases:

1. Some employees in the proposed bargaining unit supervise positions that have also been proposed for this bargaining unit contrary to RSA 273-A:8 II;
2. There is an absence of community of interest, RSA 273-A:8 I;
and

3. The inclusion of professional and non-professional positions with the same unit, is limited by RSA 273-A:8 II.

Only one position within the proposed bargaining unit has authority to exercise significant supervisory discretion over another position proposed for this bargaining unit. Lesser degrees of supervisory authority do not disqualify one position or the other Appeal of East Derry Fire Precinct, 137 N.H. 607, 611 (1993). The relationship that exists between the shift supervisors and head nurses is not disqualifying. Both positions report to the Assistant Director of Nursing. There are no evaluations, mandatory assignments, or direction expected of the shift supervisor over head nurses. Both positions are appropriate for this bargaining unit.

There was conflicting testimony and documentary evidence on the positions of hospice administrator and hospice volunteer coordinator. The hospice administrator and hospice volunteer coordinator do not relate on a supervisor/supervisee basis. The job descriptions for the two positions do not reflect the collegial working relationship between these positions. The volunteer hospice coordinator's job description, Union Exhibit No. 3, indicates that that position reports to the hospice administrator. The job description of the hospice administrator, Union Exhibit No. 2, duty No. 4, clearly includes responsibility for "[e]mployment and termination of all staff assigned to the Program" among other managerial level duties and responsibilities. Margaret Coughlin, who is assistant director of nurses, testified that the hospice administrator has full authority over the hospice volunteer coordinator position and directly supervises this position in the manner that head nurses supervise. A supervisory relationship exists when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion. East Derry Fire Precinct, 137 N.H. at 610 and 611. The position of hospice volunteer coordinator is excluded. The hospice administrator shall be included if a bargaining unit is certified.

Two proposed bargaining unit positions are combined and are held by one person. These are the assistant director of restorative services and hospice volunteer coordinator. No cause has been shown to exclude the former position from the bargaining unit. When two positions are held by one person, the terms and conditions of the bargaining unit position are extended to the employee.

There is a sufficient community of interest among the head nurses, hospice administrator, staff development coordinators, shift supervisors, assistant director of restorative services, clinical behavior therapist, facility maintenance supervisor and housekeeping supervisor positions to allow bargaining. All positions in question have similar conditions of employment considering identity and location of employment, benefits and policies that apply. The nursing home is a self contained community and a structured setting in which

all the positions proposed have a share in fulfilling the employer's purpose. These positions are focused on the well-being of the nursing home residents from the perspective of middle level managers and supervisors. The positions have in common the responsibility for maintaining different aspects of the residents' welfare and the nursing home environment.

Although there are both professional and non-professional positions proposed for this unit, the community of interest referenced above is not destroyed thereby. As is the case when a unit is proposed for professional and non-professional employees, it will be necessary to allow separate simultaneous elections. RSA 273-A:8 II. A pre-election conference shall be held on the matter of the two elections.

The bargaining unit to be submitted for certification is to consist of fifteen members¹ in eight classifications as described above in Finding No. 2, with the one exclusion of assistant director of hospice services.

So ordered.

Signed this 18th day of August, 1999.


GAIL MORRISON
Hearing Officer

¹ Corrected scrivener's error in original which reads "fourteen positions" instead of "fifteen members" on August 31, 1999.