



NH Supreme Court reversed this decision on March 23, 1998, Slip Opinion No. 96-107, 142 NH 677 (1998).

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

LONDONDERRY EDUCATION ASSOCIATION/  
NEA-NEW HAMPSHIRE

Petitioner

v.

LONDONDERRY SCHOOL DISTRICT

Respondent

CASE NO. T-0262:8

DECISION NO. 95-63

APPEARANCES

Representing Londonderry Education Association:

Gregory Andruschkevich, UniServ Director

Londonderry School District:

Robert Leslie, Esq.

Also appearing:

- Matthew Szopa, Londonderry Education Association
- Mary Donovan, Londonderry School District
- Jane Marray, Londonderry Education Association
- Holly Morrison, Londonderry School District
- Diane Donoghue, Londonderry School District

BACKGROUND

The Londonderry Education Association (Association) requested an opinion of the PELRB on April 15, 1995, after Arbitrator Roberta Golick recessed grievance proceedings pending the parties' obtaining a declaratory judgment on the question of the inclusion of the position of occupational therapist in a bargaining unit represented by the Association. The Londonderry School District (School District) filed its answer on May 2, 1995, and the matter was heard before the undersigned hearing officer on May 15, 1995.

FINDINGS OF FACT

1. The Londonderry School District is a public employer within the meaning of RSA 273-A:1X.

2. The Londonderry Education Association is the duly recognized bargaining agent for "all professionally certified personnel" employed by the School District, except for certain specified supervisory positions, in accordance with the recognition clause of the 1974-1976 agreement between the Association and the School District. The bargaining unit was modified with the addition of the school psychologist in January, 1992.
3. The School District and the Association are parties to successive contracts. The latest collective bargaining agreement (CBA) is for the period July 1, 1993, through June 30, 1996.
4. At the time of certification by recognition on December 7, 1976, and during the first contract period thereafter, there was no occupational therapist in the employ of the Londonderry School District until the hiring of Holly Morrison in 1980. The incumbent in this position was issued a teacher's contract, which has been renewed yearly, (Association Nos. 5, 6, 7), and receives step/track compensation, vacation and sick leave, insurance plans and other benefits provided bargaining unit members. She has been a dues paying member of the Londonderry Education Association since 1980. Association President Jane Marray testified that this first occupational therapist has always been treated as a bargaining unit member. Morrison participates in the staff development program and extra duty assignments required of teachers.
5. In 1988, Diane Donaghue was hired as an additional occupational therapist. She and four subsequently hired occupational therapists do not receive teachers' contracts. They are paid by the hour and receive no leave, insurance or other benefits provided bargaining unit members. The sole benefit available to Diane Donaghue is reimbursement for professional courses taken.
6. In approximately 1990, the occupational therapists became aware of the above detailed discrepancies in terms and conditions of employment. The matter has been raised by Diane Donaghue in meetings with Mary Donovan, Personnel Director, to no avail. A job description was developed as a joint project of the occupational therapists in 1990, (Association No. 8). Though the job description was not adopted, Holly Morrison and Diane Donaghue testified that it describes the job occupational therapists perform for the School District. All six occupational therapists are professionally certified by the American Occupational Therapy Association and are licensed by the State Of New

Hampshire. They are authorized to supervise the two Certified Occupational Therapy Assistants now employed by the School District whose positions are not at issue.

7. The certification and the contract contain no list of bargaining unit positions but Article 19 of the contract, which deals with reduction in force (RIF), includes a list of positions among which is that of occupational therapist. The article states in part that the "effected classification will refer to those teachers assigned in the subject areas and in the grade levels to be reduced, regardless of certification."

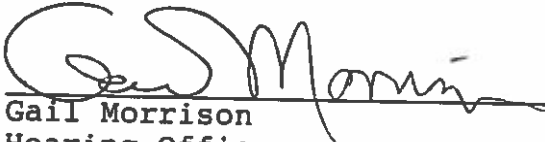
#### DECISION AND ORDER

For fifteen years, the Londonderry School District has paid its first occupational therapist according to the collective bargaining agreement, has provided her leave benefits according to the CBA and has not hesitated to provide her insurance benefits extended by contract to bargaining unit members. The Malley case, Londonderry Education Association, NEA-New Hampshire, Decision No. 94-19 (March 10, 1994), does apply to the present case. The long history of uncontroverted practice by the School District of treating this occupational therapy position as a bargaining unit position estops the School District's recent protest that this position is not one of a certified "teacher" and so has never been a bargaining unit position. The position held by Holly Morrison, certified occupational therapist, is a bargaining unit position.

The remaining occupational therapists are likewise certified professionals and are performing unit work as described in the mutually drawn up job description as is uncontroverted. The only features distinguishing the earliest from the later certified occupational therapist positions are in the compensation package. The same professional work is required of all. All six occupational therapist positions are properly bargaining unit positions.

So ordered.

Signed this 19th day of July, 1995.

  
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 Gail Morrison  
 Hearing Officer