



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

JOAN DeVILLAFANE, Individually and on
behalf of SCHOOL NURSES of the WHITE
MOUNTAIN REGIONAL SCHOOL DISTRICT

Complainant

v.

WHITE MOUNTAIN REGIONAL SCHOOL DISTRICT,
S.A.U. #36

and

WHITE MOUNTAIN REGIONAL EDUCATION
ASSOCIATION/NEA-NEW HAMPSHIRE

Respondents

CASE NO. M-0600

DECISION NO. 89-16

APPEARANCES

Representing Joan DeVillafane et. al.:

Emmanuel Krasner, Esq., Counsel
Joan DeVillafane

Representing White Mountain Regional School District:

Bradley F. Kidder, Esq., Counsel
Ed Melanson, Superintendent
Mike Martin, Business Administrator

Representing White Mountain Regional Education Association/NEA-NH:

James Allmendinger, Esq., Counsel
John Fessenden, UniServ Director

Representing N.H. School Nurses Association:

Barbara Ward, President, RN, MS, CSN

Also appearing:

Geraldine Tetreault, WMEA
Robert S. Bergin, WMEA
Janet N. Haley, WMEA
Nancy Page, WMEA
Sen. Charles Bond, WMSD
Rita Odell, WMSD

Jacqueline Gardiner, WMSD
Alfred Ward, Citizen
Fredrick B. Hecker, WMSD
Stan Holtz, WMSD
Kevin Tehan, WMEA

BACKGROUND

On April 28, 1988, Joan DeVillafane, individually and on behalf of School Nurses in the White Mountain Regional School District, filed unfair labor practice complaint against the White Mountain Regional School District (District) and the White Mountain Regional Education Association (Association) alleging that the parties to the most recent contract discriminated against the school nurses; attempted to change the composition of the bargaining unit without the approval of the PELRB (Board); that the negotiations between the parties deprived her and other school nurses of their right to fair representation by their collective bargaining agent; and, that the negotiated agreement did in fact negotiate the nurses in a separate class of persons in the bargaining unit.

In summary, the complainant and other school nurses allege the parties, District and Association, had no right, to negotiate on changes in the schedule for nurses from previously negotiated contracts that had paid them on the same salary scale as the teachers.

After several postponements because of the number of issues before PELRB regarding the status of nurses in a bargaining unit, hearing was held at the White Mountain Regional High School on October 27, 1988 with all parties represented.

By mutual agreement the parties agreed to consolidate both complaints as one for the hearing to prevent repetitive testimony from the same witnesses.

At the opening of the hearing, Atty. Kidder renewed his Motion to Dismiss on the basis of timeliness. Motion was taken under advisement without ruling.

Atty. Krasner in opening statements emphasized that nurses had always been members of the bargaining unit and had recieved the same salary and benefits as the teachers.

Atty. Allmendinger in his opening statement said that the District and the Association had reached agreement; that proposals had been made for nurses; and the District had raised the question of whether the nurses were in or out of the bargaining unit. This issue has been before the PELRB for resolution in several other cases. He further stated that the current agreement was ratified in January, 1987 and that the school nurses were considered part of the bargaining unit.

Atty. Kidder stated that the parties under RSA 273-A can negotiate any agreement and that the District wanted a differential in salaries paid to teachers and nurses.

Witness DeVillafane testified that she had been a school nurse for 18 years and a member in the Association; that as a nurse, she taught one class per day in health matters; that the contract issued to her in March of '88 was with a different pay scale for nurses; that she went to the Superintendent's office in August of '88 for clarification of salary schedules and was advised by the superintendents's office and UniServ Director of the Association that the question of whether nurses were included in bargaining unit, matter which was supposed to be resolved by PELRB in August, was going to be heard in January. She was later told that no hearing had been scheduled or held in this matter by the PELRB. DeVillafane met with the Association to question how the nurse status had been resolved and was told that the new contract did not give her economic security and no recall rights.

In cross-examination by Atty. Allmendinger, DeVillafane stated she first learned of the change in pay schedule for nurses in September of '86, from the Superintendent.

In Spring of '87 Mr. Bergin told her the nurses were in the same bargaining unit as teachers and that he knew of the possible filing for Declaratory Judgment in the matter of nurses inclusion of exclusion. Further that she had also discussed the subject with UniServ Director Fessenden as many as 15 times with no result, so she decided to file a complaint in March of '88. Mr. Bergin advised her that the subject of nurses was being negotiated and frequently responded to the progress of negotiation. In August of '87 she asked for a copy of the contract and was advised it would be available in September on the first day of school.

Atty. Kidder elicited from DeVillafane that she went to the District office in August of '87 for a copy of the agreement; that the agreement had all the language regarding nurses on a separate schedule for salaries; and, that the procedure for evaluating teachers and nurses remained the same.

At this juncture in the hearing, Atty. Kidder renewed his Motion to Dismiss as there has not been any specific evidence of any unfair labor practice. The Chair declined to rule on the motion as the Board wanted to hear all the evidence.

Two other school nurses stated they agreed with Nurse DeVillafane's testimony.

Witness Bergin, President of the Association and teacher for 6 years, testified that at first meeting to consider ratification of the agreement that 35 members out of 101 voted to reject the agreement because of the salary schedules; that on December 2, 1986 at a ratification meeting the nurse issue was not settled but that negotiations were continuing. At the January '87 ratification meeting the nurses status was still at issue and discussions ensued about Association Exhibit #4, a modification petition to include 2 nurses in the certified unit, nurses were performing bargaining unit work under the same conditions as other bargaining unit employees.

Witness Odell a member of the negotiating team testified that her notes were silent on the nurse issue because that was before the PELRB. She admitted that a document was presented at negotiation for Unit A & B as proposed by the District.

Association President Bergin again testified that the two salary schedules were discussed but could not be resolved until PELRB ruled on the issues of nurses; that he was the only representative at the contract signing; that in a visit with the Supt. in May of '88, of bargaining for nurse the subject came up and again at a January of '88 meeting and at a meeting of the signers, no resolution of the issue had been made by the Board. Bergin testified as to the number of initialed agreements specifically Association Exhibit #11 which again looked to PERLB to resolve the issue.

In answer to Atty. Krasner, Association President Bergin admitted that Association Exhibit #2 was distributed at a ratification meeting and that the proposal (#4) stated under Article I - Recognition under paragraph 2, that;

"Both parties recognize that any new position or job description will be reviewed by the parties to see if said position or job description is covered by this agreement. If the parties are unable to agree, then either party may submit the issue to the PELRB. Both parties agree that, until the decision is rendered, the new position or job description will be considered outside the scope of this Agreement. Once the PELRB's decision is rendered, it will be binding on the parties in the subsequent Agreement, unless otherwise agreed to by the parties."

UniServ Director Fessenden testified, his role was merely that of advisor to the negotiating team and that local teams met on several occasions with Atty. Kidder for discussions. He stated that he knew the issue regarding the nurses had came up in February and March.

Janet Healey, Vice President of the Association and a member of the negotiating team, testified as to several of the Association Exhibits referring in one form or another to the inclusion of nurses in the old contract language and of a meeting in February '88 at the Supt's office with Atty. Kidder and UniServ Director Fessenden who met to discuss several subjects including nurses. She stated she had not gone to the Supt's office to see the contract.

Witness Geraldine Tetreault testified that the District brought to the negotiating sessions proposed language changes regarding the nurses and separate schedules but that the agreement as to nurses was never discussed at sessions but the District gave proposals at several meetings.

Witness Kevin Tehan, member of the negotiating team stated that they could not discuss the nurse issue until resolved by the Board.

Witness Nancy Page, Chairman of the District Negotiating Committee Team, testified that the recognition clause had been discussed along with the proposed Unit A & B; that the District: Exhibit #14 indicated tentative approval and contained a proposed nurses' salary schedule, however, the Association never offered a counter proposal; and that at the contract signing on January 26 the two salary schedule nurses and teachers were included in the contract.

When questioned by Atty Allmendinger about contract reading at signature sessions, Ms. Page answered that it was not read, and that a counter proposal had been offered the District by the Association and a salary proposal was offered on November 20, 1988 and that the provision of the language and salary schedules were accepted verbally by and between the parties on that date.

School Board Member Frederick Hecker testified he was present at the November 20 meeting and his recollection was that the nurses were in the bargaining unit pending a decision by the Board to include or exclude. Further that he was present at the signing and they did not create two units A & B. When questioned by Atty. Allmendinger, "Did Association agree to include nurses in the unit?" Answer, yes.

Senator Bond, Chairman of the School Board and member for 14 years, testified he was only in on the signing and understood the written agreement agreed to by the parties contained a separate salary schedule for nurses.

Superintendent of Schools Edgar Melanson testified he had discussed the nurse situation, maybe 15 times, and that he prepared the contract for signing upon instructions from Nancy Page Chairman of the negotiating committee.

He added that at the meeting on February 3 from 9 a.m. to 11:35 a.m. the nurse subject was discussed and Mrs. DeVillafane was not present at the August 26th meeting with Bergin.

Barbara Ward, President of the N.H. School Nurses Association, testified as to the duties, functions and role of the nurses in the school system and their recognition as teachers.

The issue of nurse inclusion in teacher bargaining unit is and has been the subject of numerous decisions of this Board, some have been excluded while others included them depending upon the circumstances of each case.

Although admitting the District had long sought to negotiate nurses out of the teachers bargaining unit they denied any discrimination against nurses during negotiations for the current contract by successfully negotiating a separate salary schedule within the same certified unit.

The hearing adjourned at 9:15 p.m. and the Board allowed the parties to file post hearing briefs.

REQUESTS FOR FINDINGS OF FACT AND RULING OF LAW

ASSOCIATION'S REQUESTS:

#1 thru 11 Granted.

#12 Granted. All testimony indicated the parties agreed to defer the matter to PELRB for resolution.

#13 thru 34 Granted.

#35 Granted in part. Testimony was conflicting.

#36 Denied. Evidence not conclusive.

#37 thru 42 Granted.

#43 Granted in part. Resolution pending PELRB decision.

#44 and 45 Granted.

#46 Denied.

#47 and 48 Granted.

#49 Denied. Past experience of the negotiators not detailed.

#50 thru 52 Granted.

DISTRICT'S REQUESTS:

#1 thru 9 Granted.

#10 and 11 Granted in part. The act was ongoing and testimony indicated the matter was left to PELRB to resolve.

#12 thru 19 Granted.

#20 and 21 Granted in accordance with testimony and written evidence presented. Additional research not obtained from local hospitals.

#22 thru 29 Granted.

#30 See decision.

COMPLAINANT'S REQUESTS:

#1 and 2 Granted. That PELRB certification issued September 2, 1976 described the unit as "all teachers, guidance counselors, librarians and other professional staff, (emphasis added) including department heads and nurses." Further that the appointment letter from then Supt. Roland L. Schoeph notified Nurse Joan DeVillafane that "the White Mountains Regional School Board has elected you to serve as teacher (emphasis added) for the year 1984-85 school year."

#3 Granted. That contracts signed by nurses are headed "Teacher Contract"

#4 thru 7 Granted.

#8 Neither Granted nor Denied. Intent or objective of the District unknown.

#9 and 10 Granted.

#11 and 12 All indications and testimony presented left the resolution of the matter to PELRB.

#13 and 14 Neither granted or denied. Conflicting testimony.

#15 thru 26 Granted.

DECISION AND ORDER

After careful review of all testimony written and oral evidence presented at the hearing, the Board finds that all parties to the negotiations acted in good faith throughout the negotiations. Although some misunderstandings may have occurred during the process, PELRB cannot find that anyone acted in bad faith regarding the matters relating to nurses.

1. The nurses in the White Mountain Regional School District have been and currently still are part of the certified unit under RSA 273-A.

2. The parties to negotiations are free to negotiate any change to the salaries and working conditions of unit members during the process of negotiations.
3. An agreement was negotiated, terminated and ratified and signed by the signatories to the contract and said agreement did contain a separate salary scale for nurses and certain changes in working conditions and benefits.
4. PELRB has not in the past and will not in the future disturb in any way the conditions of the agreement signed by the parties unless such changes are in violation of existing laws.

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The unfair labor practice complaints issued in this matter are DISMISSED.

Dated this 6th day of March, 1989.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx, Daniel Toomey and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.