



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL CHEMICAL WORKERS :
UNION :

Petitioner :

CASE NO. M-0715

v. :

DECISION NO. 95-80

MERRIMACK COUNTY NURSING :
HOME :

Respondent :

APPEARANCES

Representing Merrimack County Nursing Home:

Renny Perry, Consultant

Representing International Chemical Workers:

Frank Cyphers, International Representative

Also appearing:

Judith A. Gagnon, Merrimack County Nursing Home
Cindy Day, Merrimack County Nursing Home
Timothy Gallagher, Merrimack County Nursing Home
Thomas Matzke, Merrimack County Nursing Home
Barry Cox, Merrimack County Nursing Home
Carol Haessly, Merrimack County Nursing Home
Larry J. Bourne, Merrimack County Nursing Home

BACKGROUND

On May 12, 1995, the International Chemical Workers Union filed a petition for certification of a bargaining unit of one hundred and ninety-seven (197) members to consist of registered nurses, licensed practical nurses, certified nursing assistants and other caregiving positions

as determined appropriate in PELRB Decision No. 93-168 issued January 17, 1994. On May 27, 1995, Merrimack County Nursing Home and the Merrimack County Commissioners objected saying that conditions had changed since the 1993 unit determination hearing so that the appropriate bargaining unit would include thirteen additional positions of which all but one, administrative assistant in Plant Operators, has taken on caregiving duties. The matter was heard before the undersigned hearing officer on July 10, 1995. The record was held open for the receipt of job descriptions and other evidence which were received on July 20, 1995.

FINDINGS OF FACT

1. The Merrimack County Nursing Home (County) employs nurses and other personnel in the operation of the facility and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. The International Chemical Workers Union (Union) had petitioned for formation of a bargaining unit within the nursing department at the Merrimack County Nursing Home in 1991 and again in 1993. Most recently, the Union has petitioned for certification of a one hundred and ninety-seven member bargaining unit limited to caregivers consistent with PELRB Decision No. 93-168 decided on January 17, 1994, the Findings of which are incorporated by reference.
3. Merrimack County Nursing Home Administrator Thomas Matzke testified that the Nursing Home had been in danger of incurring heavy fines for infractions of federal regulations following two inspections. The survey report for the revisit of February 21, 1994, was submitted on July 20, 1995. It cites deficiencies with feeding procedures, especially slow delivery of meals to residents. Administrator Matzke stated that there is an emphasis on recognizing the facility as "home" to residents. Because there have been insufficient funds to hire new employees to overcome deficiencies, existing positions have taken on resident care duties in order to have a remedy in place before the July 1, 1995, federally imposed deadline.
4. Two housekeepers work on each floor each shift.

They sweep, clean toilets and perform other duties as stated in the job description. Cindy Day testified that she has been a housekeeper at the Home for six years. In addition to cleaning, she waters plants and brings glasses of water to residents. About six months prior to the hearing, she and other workers were called to a meeting and told of plans to address certain deficiencies. She voluntarily assumed the feeding of one resident during her shift. Other housekeepers feed or participate in the delivery of food. When housekeepers are assisting with feeding, they are overseen by a charge nurse. Certified nursing assistants are given the duty of feeding more difficult residents as part of their regular duties.

5. Thomas Gallagher, Director of Food Services for six years, recalled staff meetings at which he was briefed on the need to upgrade food delivery procedures so that meals are available to residents within twenty-five minutes of the food leaving the kitchen. As a result, he, the secretary, cook, trayline workers, kitchen aides and dietary aides feed patients. He said that this has given rise to closeness between staff and residents.
6. Judith Gagnon, Director of Nurses, stated that the sterilization technician is also required to be a certified nursing assistant. The sterilization technician has always done some nursing such as bathing residents and she now feeds residents in addition to her regular duties. The job description for unit aide is in evidence for the first time and includes interaction with residents. Judith Gagnon said that this position cleans and changes beds while the residents are present. The position has been expanded to include tray passing, hydration and operation of the elevators at mealtime.
7. Maintenance workers enter residents' rooms frequently to change light bulbs and appliance plugs as well as to perform other duties outlined in job descriptions. They now provide water and carry out simple requests of residents since the

change of approach to total facility resident care. The functions listed in the job description for Maintenance Worker II are:

- Repair and maintain buildings, equipment and grounds.
- Ensure that all directives from the Director of Plant Operations and Maintenance Supervisor are completed
- Respond to maintenance requests.
- Repair plumbing fixtures.
- Maintain all painted and wallpapered surfaces.
- Hand lettering of signs and refinishing of furniture.
- Repair and maintain boilers.
- Repair electrical and mechanical systems.
- Remove refuse.
- Remove snow.

DECISION AND ORDER

RSA 273-A:8 reserves to the PELRB the certification of bargaining units mandating that consideration be given to certain indicators of community of interest when determining the appropriate bargaining unit. At this and at the prior hearing, the County urged an all inclusive unit be certified. In the prior decision, PELRB Decision 93-168, caregiving positions at the Merrimack County Nursing Home were found to share concerns focusing on the residents' well-being and a community of interest in general based on the statutory indicia. At the recent hearing, witnesses for the County testified that all but one nursing home position in question had been amended in response to federal requirements and now include some direct contact with residents. This was not reflected in the job descriptions which were largely unrevised since the 1993 hearing.

The job descriptions of the positions in question within the maintenance department and within the dietary department contain no major duties that would suggest care of residents was anticipated. The minimum job requirements likewise do not reflect an expectation of resident/employee interaction to any degree. (See Finding No. 7). For instance, the addition of filling a water glass or adjusting a television set to the duties performed by the Maintenance II position does not convert the position into that of a caregiver.

Likewise, a job description defines the work of housekeeper in active verbs such as mop, sweep, vacuum, strip, scrub and wax. Only one secondary function, to assist in moving residents and their belongings, may involve contact with residents. Cindy Day made clear that the assumption of feeding duties was voluntary so that some housekeepers have some direct interaction with residents and are involved to a degree in caregiving and some housekeepers are not providing care. There is not a sufficient basis to include this group within the bargaining unit as the changes described are not consistent among all housekeepers.

On the other hand, the 1992 unit aide job description includes among the major duties cleaning and bed making and assigns several routine tasks involving resident interaction including transporting residents, passing and clearing residents' trays and feeding residents at breakfast and dinner. The ability to carry out these functions is required for this position and is not optional. Testimony indicates that these bedmakers now hydrate and feed residents as well. Judith Gagnon attested that the sterilization technician is also required to be a certified nursing assistant. In addition to duties specified in the job description, this position has always done some nursing including bathing residents. The sterilization technician now feeds residents also. The eight unit aides and the sterilization technician are appropriate positions for bargaining unit membership and are the only positions added to the petitioned for bargaining unit.

The modified bargaining unit appropriate for the Merrimack County Nursing Home shall include the following positions: registered nurses, licensed practical nurses, certified nursing assistants, social worker, psychiatric social worker, certified occupational therapy assistants, occupational therapy aide, beautician and barber, activities aide I and II, admissions secretary, transportation assistant/courier, unit clerk, unit aide and sterilization technician. An order of election shall now be issued.

So ordered.

Signed this 7th day of September, 1995.


Gail Morrison, Hearing Officer