



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

: AFSCME COUNCIL 93, LOCAL :
3438 :
: :
: :
Petitioner : CASE NO. A-0491:14
: :
v. : DECISION NO. 95-120
: :
: :
SULLIVAN COUNTY NURSING :
HOME :
: :
: :
Respondent :
_____ :

APPEARANCES

Representing AFSCME LOCAL 3438:

James C. Anderson, Staff Rep.

Representing Sullivan County Nursing Home:

Marc Hathaway, Esq.

Also present:

Howard Tawney, Sullivan County
Robert Hemenway, Sullivan County
Bob Morrow, Sullivan County
Clint Faber, AFSCME
Elizabeth Kosli, AFSCME
Patricia Macomber, AFSCME

BACKGROUND

On September 14, 1995, the American Federation of State, County and Municipal Employees Council 93, Local 3438 (AFSCME), filed a petition to modify the bargaining unit at the Sullivan County Nursing Home with the addition of the position of Evening or P.M. Supervisor. Sullivan County filed its objections on September 27, 1995. A hearing on the matter was held before the

undersigned hearing officer on November 1, 1995. The record was held open until December 4, 1995, for the receipt of evidence.

FINDINGS OF FACT

1. Sullivan County, hereinafter County, staffs and operates a nursing home and thereby is a public employer within the meaning of RSA 273-A:1 X.
2. AFSCME Council 93, Local 3438, hereinafter Union, is the certified bargaining agent for employees who work at the Sullivan County Nursing Home.
3. The County and the Union are parties to a collective bargaining agreement (CBA) signed August 4, 1994, which is effective for the period July 1, 1994 through June 30, 1997. The recognition clause of the CBA includes Cook II positions but excludes the position of P.M. Supervisor. The Union now seeks to add the latter position to the bargaining unit.
4. Patricia Macomber was hired in June, 1992. With the exception of one break in employment early in 1995, she has worked continuously for the County. All testimony indicates that the work this employee performs for the County has changed little since her hire. Hearing testimony dwelt on whether Patricia Macomber has held the position of Cook II or P.M. Supervisor or both positions simultaneously over the years. Budget documents show position #51002 to be a Cook II position before February, 1995, and a P.M. Supervisor position after February, 1995. Testimony and evidence suggest that the two different titles were held by one person, Patricia Macomber, prior to February, 1995. Both positions have the same labor grade which is grade 6.
5. The benefits package available to supervisors, such as the P.M. Supervisor, is superior to the benefits package available to non-supervisory employees. In October 1993, it became apparent that Patricia Macomber was receiving the non-supervisory employee benefit package available to her as Cook II, rather than the plan available to her as a supervisor. The error was corrected and Ms. Macomber began to receive an enhanced benefits package retroactive to 1992.

6. Though she long has been the P.M. Supervisor, over the years, Ms. Macomber has not independently performed supervisory functions such as independent evaluation or direct discipline of employees. The two job descriptions provided for Evening Supervisor, signed by the incumbent in 1992 and 1995, are characteristic of a "working supervisor" who remains in the kitchen doing the same work as fellow workers and directs the performance of tasks but does not perform key supervisory tasks such as employee evaluations or discipline.
7. The position of P.M. Supervisor was not specifically excluded through the recognition clause of the prior CBA. The P.M. Supervisor position was the subject of negotiations during bargaining for the most recent CBA. Both the County and the Union signed the agreement which contains language specifically excluding from bargaining unit membership the position of P.M. Supervisor. In early 1995, Ms. Macomber was rehired to the sole position of P.M. Supervisor.

DECISION AND ORDER

RSA 273-A:8 empowers this Board to determine the composition of bargaining units. Regulation PUB 302.05 advises as to the circumstances which favor or which weigh against modification of a bargaining unit. That a position has been the subject of bargaining for the current contract is reason enough for denial of a petition for modification. In this case, the parties bargained to exclude the position in question from the most recent contract. It is apparent that the incumbent wishes to remain a working supervisor and to become a union member. She has resisted the delegation to her of supervisory duties, such as evaluation and discipline, presaged by the contract change. Ms. Macomber has long received benefits commensurate with a supervisory position as the parties were aware when reaching their decision to exclude this position. The facts of this case do not warrant a reversal of the parties' agreement.

Therefore, the petition to modify the bargaining unit at the Sullivan County Nursing Home is denied.

So ordered.

Signed this 18th day of December, 1995.



GAIL MORRISON, Hearing Officer