



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION/COOS
COUNTY DIETARY EMPLOYEES

Petitioner

v.

COOS COUNTY NURSING HOME

Respondent

CASE NO. S-0406

DECISION NO. 1999-086

APPEARANCES

Representing State Employees Association of New Hampshire, SEIU
Local 1984:

Teresa DeNafio Donovan, Esq., Counsel

Representing Coos County Nursing Home:

Thomas J. Flygare, Esq., Counsel

Also appearing:

Suzanne Collins, Coos County Nursing Home
Virginia Freudenberger, Coos County Nursing Home
David Chitton, Coos County Dietary Employees
Bethany Kennett, Coos County Dietary Employees

BACKGROUND

On June 30, 1999, State Employees Association/Coos County Dietary Employees filed a petition to certify a bargaining unit of dietary workers. On July 12, 1999, the County objected to the petition on four bases:

1. The existence of a supervisory relationship between

positions in the bargaining unit contrary to RSA 273-A:8 II;

2. The temporary status of three of the dietary aides; meaning they are not "public employees" within the as defined by RSA 273-A:1 IX;
3. Fragmentation that would result from certifying a small unit that is part of a larger nursing home staff;
4. Interference with efficient operation of government that would result from certification of this bargaining unit.

The County filed a motion on July 29, 1999 to quash subpoenas which had been issued by the Union. The Union filed a limited objection to that motion on August 2, 1999. A hearing was held before the undersigned hearing officer on August 3, 1999. As a preliminary matter, the motion to quash was addressed and the parties' stipulations settling the matter are on record. The parties submitted post-hearing briefs on August 24, 1999, at which time the record was closed.

FINDINGS OF FACT

1. Coos County employs personnel to operate its dietary department and other departments within the nursing home and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. State Employees Association has petitioned to become the exclusive bargaining representative for a seventeen member bargaining unit to consist of three job titles: cook, dietary aide and dishwasher.
3. Virginia Freudenberger has been the dietary director at the Coos County Nursing Home for eight years and continues in that position. She was called to testify by the Union. She testified that she performs evaluations, assigns work, and interacts with professional staff in keeping abreast of the dietary needs of residents. Any complaints made to subordinate staff would be brought to her and then to Ms. Collins, the administrator, if necessary. Freudenberger approves personal leave requests and obtains substitute workers when needed. If discipline is meted out, she is

responsible. She stated that it is she who would place a warning in an employee's file but that she has never done so because of the quality of her excellent staff. Director Freudenberger has not delegated her supervisory duties to any other staff position. When she began in her position, there was a supervisor of dietary aides. The position was eliminated as duplicative and unnecessary upon her recommendation. She assumed the duties formerly performed by the supervisor of dietary aides.

4. The job description for the position of cook indicates that the cooks are in charge of the kitchen during their shifts with a primary purpose of preparing food in accordance with governmental standards. (Union Exhibit No. 4) The job description for cook reads, [the cook is] "delegated the authority, responsibility, and accountability necessary to carry out [his or her] assigned duties." Three Personnel Functions" are listed in the cook's job description: maintaining a good rapport with staff; creating and maintaining a warm, positive, calm atmosphere; and, providing weekend supervision of dietary workers.
5. David Chitton is one of four cooks at the Coos County Nursing Home. He testified that he is the late cook at the facility and that the detailed document, "Dietary Department Time Activity Schedule for Late Cook," described his duties with relative accuracy depending on the meal being prepared. (Union Exhibit No. 1). He said that he supervises inmates who work in the kitchen but he does not supervise employees. If a dietary aide required discipline, he would inform his supervisor, Virginia Freudenberger, as soon as possible. Dietary aides do not seek his approval for any activities outside of food preparation. He does call substitutes when the kitchen is short staffed but he has no role in evaluations and has received one evaluation by the dietary director, his supervisor, in the fifteen months he has been employed at the Coos County Nursing Home.
6. There are ten dietary aides, some of whom operate the dishwashing machine as well as preparing food. Some are part-time and some are full-time employees. In addition, there are three part-time dietary aide employees who are referred to as temporary workers.

One dietary aide is scheduled for fifteen hours per week. That position is held by a high school student named Tristan Manache. He may continue when he returns to school or he may leave that position. Whatever his choice, there will be a need for the work to be performed. The second position has recently been vacated and the third has been vacant for some time. County policy mandates as six month probationary period. (County Exhibit No. 4).

7. Suzanne Collins is the County Administrator and the Administrator of the Coos County Nursing Hospital, a ninety-seven (97) bed facility located in West Stewartstown. She testified that cooks have authority to take corrective action and resolve disputes in the absence of the dietary director who is absent on weekends.
8. Suzanne Collins testified that she oversees the Berlin nursing facility as well as the facility at West Stewartstown. She stated that the West Stewartstown facility operates as an integrated primary care facility that is different from the organization in Berlin. Coos County Nursing Hospital Staff at West Stewartstown, regardless of their positions, form bonds as members of teams of caregivers. The organizational chart is reversed so that the resident is at the top and all caregivers are focused on meeting the residents' needs. (County Exhibit No. 5). One member from each department participates on each team of caregivers with a goal of providing a home for residents. (County Exhibit No. 2). Ms. Collins' concern is that a bargaining unit of dietary workers will fracture this team and she will be required to spend much of her time dealing with grievances and negotiating over disparities in wages and conditions. She fears undermining the morale and efficiency of her staff, only some of whom would be in the bargaining unit. Since residents are sensitive to differences, she thinks the establishment of a bargaining unit will ultimately impact their care.

DECISION AND ORDER

The legislature has delegated to the Public Employee Labor Relations Board the authority to determine whether a bargaining unit is to be certified and, if so, the composition of that

bargaining unit. RSA 273-A:8. In making that determination, each bargaining unit is to be examined 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 overall consideration is the presence of a community of interest such that it is reasonable for those included in the bargaining unit to negotiate together. *Id.* citing Appeal of University System of New Hampshire, 120 N.H. 852 at 855 (1980).

The County's objections have been considered. The first objection examined is to the inclusion of the positions of cook and dietary aide in the same bargaining unit because of the supervisory relationship of cook over dietary aide. Opening testimony at the hearing was from the dietary director, Virginia Freudenberger, who supervises the kitchen staff including the cooks. Her description of the supervisory relationship between the cook position and the dietary aide position is similar to that of Cook David Chitton and is reflective of the organizational chart, (County Exhibit No. 5) as well as the various positions' Time Activity Schedules, (Union Exhibit No. 1-3, 5-15) and the job description of the cook position, (Union Exhibit No. 4). The cook performs no supervisory tasks such as evaluating staff members or contributing to evaluations, though evaluations are performed. That position does not assign work. It is Dietary Director Freudenberger who assigns work, evaluates employees and has disciplinary responsibility. When the dietary director is not present, the extent of the supervision is oversight of staff in meal preparation. The cook brings problems that arise to the attention of the Dietary Director. The cook position does not exercise significant supervisory discretion such as to require exclusion of the position from a bargaining unit of dietary employees. Appeal of East Derry Fire Precinct, 137 N.H. 607, 610 (1993). RSA 273-A:8 II is not implicated.

Three part-time positions are held by temporary workers. Only one position was discussed at length. Virginia Freudenberger testified that this position is necessary to fill out the schedule and so will be filled if the current holder of the position returns to school. This is a regular part-time position that happens to be held by a temporary employee. The position may be included in the bargaining unit proposed. The Union has not met its burden regarding the two remaining positions challenged as temporary.

The concern regarding the fragmenting the community of interest that exists at the Coos County Nursing Hospital bears attention. Past decisions by this Board have favored an inclusive community of caregivers in nursing home settings. However, there is a natural segment within this particular workforce that is the dietary department.

All employees of this department report to the same supervisor, Virginia Freudenberger. They work in the same department and area, the kitchen/dining area. The bargaining unit proposed includes all regular department employees. All of these employees share the same conditions of employment and work under the same County policies (County Ex. No. 1). Bargaining history is to be considered when reviewing community of interest. RSA 273-A:8 I (b). It is noted that a larger and inclusive bargaining unit was once certified at this facility. It was decertified in 1987. A bargaining unit as delineated in the certification petition best suits these dietary department employees.

In this particular case, a bargaining unit composed of all regular positions within the dietary department excepting supervisory staff is appropriate. The bargaining unit to be certified following a successful election shall consist of cooks (4) and dietary aides including dishwasher/dietary aides (11).

So ordered.

Signed this 1st day of September, 1999.



GAIL C. MORRISON
Hearing Officer