



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Conway Education Association,  
NEA-New Hampshire

Petitioner

v.

Conway School Board

Respondent

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Case No: T-0221-17

Decision No. 2004-200

APPEARANCES

Representing the Conway Education Association, NEA-NH:

James F. Allmendinger, Esquire

Representing the Conway School Board:

John F. Teague, Esquire

BACKGROUND

The Conway Education Association/NEA-New Hampshire (hereinafter "Association") filed a Modification Petition with the Public Employee Labor Relations Board ("PELRB") on April 21, 2004 seeking to add the position of school nurse to the existing certified bargaining unit. In its petition, the Association explains the circumstances of the modification request as being "...a great deal of turn over in the nursing positions over the past several years, more than 20 different people in the last 8 years. There needs to be some stability at these positions."

The Conway School Board (hereinafter "Board" or "District") filed its Exceptions to the Association's petition on May 6, 2004, raising several grounds upon which it claims that the petition should be dismissed. The Board asserts that the petition is defective on its face, in that the Association has failed to allege or support a claim that circumstances have changed since the formation of the bargaining unit. The Board requests that the petition be summarily denied since it falls within the mandatory denial language of Pub 302.05(b)(1) and (2). While reserving its

procedural objections, the Board further asserts that as of school year 1996-1997, all teaching nurse positions were eliminated and that since that time, school nurses in Conway have had no teaching function. The Board submits that these "non-teaching" school nurses do not have a community of interest with other members of the bargaining unit, that the inclusion of these positions into the unit at this time would adversely affect the efficiency of government operations, and that based upon the status of school nurses as professional positions, they may not be added to the existing bargaining unit unless they and the members of the current unit vote independently to be placed in the same bargaining unit.

A hearing on the Association's petition was originally scheduled for June 16, 2004, but it was postponed following the filing of an Assented to Motion to Continue by the Board on June 14, 2004. A hearing was conducted on August 18, 2004 before the undersigned hearing officer at the offices of the PELRB in Concord, New Hampshire. Both parties were represented at the hearing by counsel, and had the opportunity to present witnesses for examination, to undertake cross-examination, and to offer exhibits into evidence. At the outset of the hearing, the Board made a motion to dismiss. The hearing officer heard arguments from both parties on the motion and then took the matter under advisement. Thereafter, the Association and the Board presented their cases in chief. At the conclusion of the hearing, the record was closed subject to the filing of post-hearing briefs, both of which were filed in a timely manner by the parties on September 10, 2004.

#### FINDINGS OF FACT

1. The Conway School Board is a public employer within the meaning of RSA 273-A:1, X.
2. The Conway Education Association/NEA-NH ("Association") is the duly certified exclusive bargaining representative of a bargaining unit comprised of "All permanent, full-time teachers of the Conway School District, excluding superintendents, assistant superintendents, business administrators, principals, assistant principals, director of guidance, director of vocational education, non-teaching nurses, teacher aides, tutors, substitute teachers, school volunteers or persons employed by the State Board of Education or the North Country Education Services, or department heads who teach three (3) periods or less per day or fifty (50) percent or less time per week."
3. The Board and the Association are parties to a collective bargaining agreement (CBA), for the period July 1, 2002 – June 30, 2005, wherein the Board recognizes the Association "as the exclusive representative of all teachers of the Conway School District during the term of this Agreement." (District Exhibit No. 2, p. 3).
4. Article 1-1 of the CBA defines "Teachers" as including "any individuals employed by the Conway School District, the qualifications for whose positions are such as to require them to hold an appropriate credential issued by the N.H. State Board of Education under its regulations governing certification of teaching personnel, EXCEPT that the term "teachers" or "teaching personnel" shall not include superintendents, assistant superintendents, business administrators, principals,

assistant principals, director of guidance, director of vocational education, nonteaching nurses, teacher aides, tutors, substitute teachers, school volunteers or persons employed by the State Board of Education or the North Country Education Foundation, or department heads whose school day consists of more than 50% department head duties.” (District Exhibit No. 2, p. 3).

5. The Association filed a modification petition with the PELRB on April 21, 2004 seeking to add “all school nurses” to the bargaining unit. The Association’s explanation of the circumstances or reason for the modification request was described as being “a great deal of turnover in the nursing positions over the past several years [sic] more that 20 different people in the last 8 years. There needs to be some stability at these positions.” (Modification Petition, p. 1)
6. The Board filed its exceptions on May 6, 2004. wherein it claimed, *inter alia*, that the petition is defective on its face by not following the requirements of RSA 273-A:8, and more specifically Pub 302.05, and that the changed circumstances, if any, leading to the filing of the instant petition, occurred prior to negotiation of the CBA presently in force.
7. Prior to 1996, the Board employed bargaining unit “nurse teachers” in its schools. In 1996, as a result of a severe budget crisis, the Board discontinued the position of nurse teacher and began employing non-teaching school nurses. Non-teaching school nurses are excluded from the Association’s bargaining unit.
8. Commencing in 1996, the school nurses have advocated for the retention of nurse teachers at all schools in the District. Several attempts, albeit informal, to reinstate the District’s use of nurse teachers, or to include non-teaching nurses under the parties’ CBA, occurred between 2000 and 2003, but were unsuccessful. During this time period, school nurses met with Assistant Superintendent Judith Wooster, but pursuit of the issue ultimately broke down.
9. During contract negotiations in 2000, the Board proposed the removal of Article 26-4 from the CBA. (District Exhibit No. 7). Article 26-4 provides that “[n]urses who are licensed by the State of New Hampshire and employed as school nurse/teachers will be placed on the same salary schedule as all other professional staff members. ‘School nurse/teachers’ who do not have a Bachelor’s degree will have their salary based on the non-degree schedule.” (District Exhibit No. 2, p. 20). The Association rejected the Board’s proposal and the school nurse/teacher language remains in the agreement.
10. The fact of school nurse turnover existed prior to the current CBA going into effect, and dates back approximately eight (8) years. As confirmed by Association President Curtis Finney, the situation that exists today is no different than that of 2002, immediately prior to negotiations for the current CBA. The Association did not attempt to bargain over the issue of inclusion of the school nurses at that time because there was no direction from the nurses to bring the issue forward. Hence, the

recognition clause language remained the same. The "change in circumstances" since the current CBA went into effect, as advocated by the Association, is that now there is a group of nurses that wishes to pursue the issue and Ms. Wendy LaMonde, School Nurse at the John Fuller Elementary School, has assumed greater teaching responsibilities in her position.

11. Current school nurses, particularly at the high school, spend only a small portion of time in the classroom. There are other employees who also are not regular classroom teachers, but conversely are recognized as part of the teachers bargaining unit, including the Speech Language Specialist, Guidance Counselors, Librarians, and Specialists in Assessment of Intellectual Functions.
12. While teachers and nurse teachers are required to have appropriate teaching certificates, non-teaching nurses are not. Ms. LaMonde does not have a teaching certificate, and nor do the two school nurses at the high school.
13. Current school nurses do not correct papers, prepare lesson plans, or give out grades, but teach students informally, in periods of short duration, and generally in a one-to-one context that has been initiated by the student. They are available to students (and staff) for dispensing prescription medicines, treatment of injuries, and providing consults and assessments of medical issues.
14. Individual school nurses, such as Ms. LaMonde at the elementary school level, may become involved in assisting classroom teachers or participating in special education teams as case managers. However, this is matter of individual initiative and happens rarely, if ever, at the high school.

#### DECISION AND ORDER

#### JURISDICTION

The New Hampshire Public Employee Labor Relations Board is the administrative agency charged with determining the composition of public employee collective bargaining units. RSA 273-A:8. Inherent in that authority, and pursuant to Pub. 302.05, is the discretion necessary to consider modification petitions. The composition of each bargaining unit is evaluated on its own circumstances on a case-by-case basis. *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995).

#### SUMMARY OF DECISION

The District's Motion to Dismiss is denied since the Association's petition sufficiently complies with the provisions of Pub. 302.05(c). However, following a consideration of the evidence, the Association's petition is also denied pursuant to Pub. 302.05(b)(2). The parties have agreed to language within their CBA that excludes non-teaching nurses and that only those teaching employees required to hold an appropriate credential issued by the N.H. State Board of Education, under its regulations governing certification of teaching personnel, shall be

recognized as being within the bargaining unit. The instant petition seeks to expand the bargaining unit to include employees, namely school nurses, who do not hold, nor are required to hold, said state certification. It also appears from the record that current school nurses are not expected or required to perform traditional teaching functions, although they have not been prohibited from performing some such tasks. Despite the existence of legitimate and well reasoned arguments in favor of including school nurses within the unit, to grant modification at this time would conflict with "bargained for" language contained in the parties' CBA on the basis of circumstances that actually existed before negotiation of the collective bargaining agreement presently in force.

## DISCUSSION

Modification of a bargaining unit may be accomplished pursuant to the PELRB's administrative rule Pub. 302.05. Pub. 302.05(a) provides, in pertinent part, that:

Where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed, or where a prior unit recognized under the provisions of RSA 273-A:1 is alleged to be incorrect to the degree of warranting modification in the composition of the bargaining unit, the public employer, or the exclusive representative...may file a petition for modification of bargaining unit.

N.H. CODE ADMIN. R. PUB 302.05 (a). Furthermore, Pub. 302.05(b) provides that:

A petition shall be denied if:

- (1) The question is a matter amenable to settlement through the election process; or
- (2) The petition attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force.

N.H. CODE ADMIN. R. PUB 302.05 (b). Here, the Association, as the exclusive representative, has filed a modification petition seeking to have the position of school nurse added to the certified bargaining unit.

At the outset, the Board claims in its Motion to Dismiss that the instant petition should be denied on its face, pursuant to Pub 302.05(b) and Pub 302.05(c), since it does not adequately articulate a change in circumstances that occurred since the negotiation of the CBA presently in force. Pursuant to Pub. 302.05(c), the modification "petition shall set out a clear and concise statement of the circumstances prompting the filing of the petition." N.H. CODE ADMIN. R. PUB 302.05 (c). I deny the Board's motion because, pursuant to Pub 302.05(c), the petition does set out a clear and concise statement of circumstances that led the Association to file the instant petition. The Association states that there has been a significant amount of turnover in the school nurse position over the last eight (8) years and that "[t]here needs to be some stability at these positions." (Modification Petition, p. 1). I note that during the course of the Association's case it was revealed that the added job responsibilities of the school nurse at the Fuller Elementary School (Ms. LaMonde) and the fact that the school nurses, as a whole, were now interested in

pursuing the matter also served as motivating reasons for the filing of the instant petition. Nonetheless, in these administrative proceedings, I conclude that the petition itself provided sufficient notice as to the issue at hand, namely of whether or not the position of school nurse should be added to the certified unit at this time. It is indeed entirely another matter as to whether the circumstances established by the Association constitute a sufficient basis for modifying the certified unit, and in this regard the Association has the burden of proof.

I find that based upon the record before me that the petition must be denied. There is no dispute that the issue of school nurse turnover has existed ever since the Board effectively abolished the position of school nurse/teacher in 1996. Thus, this fact cannot reasonably be considered a "changed circumstance" occurring since the negotiation of the current CBA.

Association President Finney acknowledged during his testimony that circumstances are the same now as they were in 2002, or prior to the effective date of the current agreement. His testimony also elicited the fact that now the school nurses desire to pursue the issue of inclusion within the Association's bargaining unit, and that this was not the case back in 2002. Although this "change" could reasonably constitute a basis to grant the petition, it is also a fact that current contract language, as contained in the recognition clause of the CBA, specifically excludes the current school nurses from the bargaining unit. Not only does Article 1-1 of the CBA specifically exclude "non-teaching nurses" from the bargaining unit, but teachers are defined as "any individuals employed by the Conway School District, the qualifications for whose positions are such as to require them to hold an appropriate credential issued by the N.H. State Board of Education under its regulations governing certification of teaching personnel." (Finding of Fact No. 4, above). Currently school nurses within the District are not required, nor do they possess, state teacher certifications. (Finding of Fact No. 12, above). Accordingly, the granting of the Association's petition would conflict with current "bargained for" language under the parties' CBA.

Although there is no evidence in the record of bargaining history regarding Article 1-1, at some point in time the express teacher definition language was negotiated into the agreement, and such language was accepted once again by the parties upon formal ratification of the current CBA. Unlike the facts in *Appeal of Bow School District*, 134 N.H. 64 (1991), where the lapse of a side bar agreement was one of the circumstances that led to a filing of a modification petition, there has been no such lapse in the recognition language of Article 1-1. But for an apparent lack of interest on the part the school nurses, there have otherwise been no impediments for the Association to raise the issue of their inclusion into the unit (and a change of the recognition clause) over the course of its negotiating the past several contracts with the Board (or since 1996).

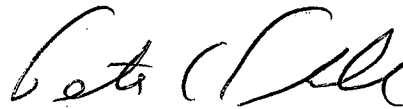
I have considered the evidence relating to Ms. LaMonde's job responsibilities and the extent to which this also would constitute a change in circumstances under Pub. 302.05. While her responsibilities as school nurse have expanded over the course of the current CBA, including more interaction with teachers and participation on special educational teams, this does not seem to have similarly occurred for the other school nurses within the District. On the contrary, it would appear the Ms. LaMonde has taken the initiative to fulfill what she views is the proper role of a school nurse. In this regard, the record certainly reflects Ms. LaMonde's dedication to

her profession and high level of professionalism. It does not however lead to a conclusion that the bargaining unit must be modified since the tasks she has taken upon herself to perform are not uniformly carried out by the other school nurses. In fact there is no evidence that the other school nurses perform the same or similar tasks of Ms. LaMonde during the regular school year and none of the District's school nurses, including Ms. LaMonde, are regularly scheduled for classroom time. Although classroom time is not a condition precedent for inclusion in the bargaining unit (See Finding of Fact No. 11, above), state teacher certification remains a requirement under the CBA.

Based upon the foregoing, I conclude that the record is insufficient to establish a change in circumstances in order to grant the petition under Pub. 302.05. It is significant to note that of the school nurses, only those that are "non-teaching" are specifically excluded from the bargaining unit. Hence, school nurses who teach and are otherwise required to hold state teaching certificates are currently included within the bargaining unit. This decision should therefore not be construed as prohibiting further discussions between the parties, nor any mutual agreement between them, that results in the subsequent inclusion of the current school nurses within the Association's bargaining unit. Since the Association's petition is denied pursuant to Pub. 302.05(b)(2), it is unnecessary for the hearing officer to address the other exceptions and arguments raised by the Board, including its specific requests for findings of fact and rulings of law. See also *Appeal of New Hampshire Department of Employment Security*, 140 N.H. 703 (1996).

So ordered.

Signed this 22<sup>nd</sup> day of December, 2004.



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Peter C. Phillips, Esq.  
Hearing Officer

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