



**State of New Hampshire**  
**Public Employee Labor Relations Board**

**State Employees' Association of New Hampshire, Inc.,  
SEIU Local 1984**

**and**

**Rockingham County  
(Nursing Home)**

**Case No. G-0280-1  
Decision No. 2019-171**

**Appearances:**

Gary Snyder, Esq., SEA General Counsel, Concord, NH for the State Employees' Association of New Hampshire, Inc., SEIU Local 1984

Elizabeth Bailey, Esq., and Bryanna K. Devonshire, Esq., Sheehan Phinney Bass & Green, PA, Manchester, NH, for Rockingham County

**Background:**

On March 8, 2019, the State Employees' Association of New Hampshire, Inc., SEIU Local 1984 (Union) filed a petition for certification seeking to represent certain employees of the Rockingham County Nursing Home (County).<sup>1</sup> The petition is supported by the requisite number of confidential authorization cards. See March 22, 2019 PELRB Report re: Inspection of Confidential Authorization Cards. See also April 11, 2019 Supplemental Card Report.

The County objects to the petition on the grounds that the proposed unit (1) lacks a community of interest required under RSA 273-A:8; (2) inappropriately includes "per diem"

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<sup>1</sup>The Union amended its original petition by adding the position of Social Worker to the description of the proposed bargaining unit. See PELRB Decision 2018-098 (granting Union's motion to amend). The Union further modified the description of the proposed bargaining unit during the April 25, 2019 hearing by removing the positions it originally designated as Restorative Aide, Restorative Supervisor, Certified Nursing Assistant, and Nursing Unit Coordinator. The Union and the County agreed that these position titles do not exist.

employees in violation of RSA 273-A:1, IX (d); and (3) inappropriately includes supervisory employees in violation of RSA 273-A:8, II. In its opening statement at the hearing, the County for the first time stated that employees of the Assisted Living facility should also be included in the proposed bargaining unit.

A hearing was held on April 25, 2019 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. During the hearing, the undersigned hearing officer asked the parties to submit an additional exhibit. This exhibit (Joint Exhibit 23) was submitted on May 20, 2019. See footnote 5 below re post-hearing Exhibit 22. The parties filed post-hearing briefs on May 10, 2019; and the decision is as follows.

#### **Findings of Fact**

1. The County is a public employer within the meaning of RSA 273-A:I, X.
2. The Union is an employee organization seeking to represent a proposed bargaining unit consisting of the following Rockingham County Nursing Home positions:

Housekeeping, Laundry, Licensed Nursing Assistant (LNA), Receptionist, Registered Nurse (RN), Medical Nursing Assistant (MNA), Licensed Practical Nurse (LPN), Unit Manager, Nursing Administrative Assistant, Activities Aid, and Social Worker.

At the time the petition was filed, the proposed bargaining unit contained 208 employees, including 55 probationary employees. The proposed unit includes full time, part time, and so called "per diem" employees.

3. The Nursing Home has employees with the title of "Supervisor," who are licensed as nurses, e.g. RNs, and who were not included in the proposed bargaining unit. These Supervisors conduct performance evaluations of employees in the proposed bargaining unit who work on night or weekend shifts.

4. MNAs, among other things, administer various medications as directed by a licensed nursing staff; replenish medications and supplies; keep the nursing station clean; keep licensed personnel informed of significant observations in resident care, supply and equipment needs, and performance problems; assist residents with nutrition and all aspects of personal hygiene, such as bathing, grooming, and dressing; perform housekeeping, such as mopping spills, bed making, and cleaning wheelchairs, eating surfaces, and resident's personal storage spaces; provide comfort and activity for residents; obtain blood pressures and other vitals of residents when directed by licensed nursing staff; and identify and report violations of resident rights and suspected or witnessed abuse.

5. The LNA's duties and responsibilities include the following:

- Provides personal care services to residents/clients as directed by the licensed nurse according to the resident's/client's plan of care (bathing, grooming, feeding, toileting).
- Completes all documentation as required in electronic medical records system.
- Observes and reports any changes and /or concerns identified during resident care activities.
- Maintains resident's/client's rooms and belongings in a clean, orderly condition. As well as all unit common areas. [sic]
- Provides other non-professional services necessary in caring for the personal needs and comforts of the residents as directed by the licensed nurse, (examples; [sic] cleaning of equipment, preparing residents/ clients rooms for admissions).
- ...
- Performs within the LNA scope of practice any other duties delegated by or assigned by the licensed nurse.
- ...
- Responds in emergency situations per facility emergency policies and assists as necessary ...

See Joint Exhibit 12.

6. The RN's duties and responsibilities include the following:

Provides medication administration and prescribed treatments including all required documentation on assigned unit. Directs and assists LNAs to ensure the residents'/clients' plan of care is followed, providing physical and psychological support for residents/clients.

Essential Job Functions:

- ...
- Provides overall direction and coordination of MNA and LNA activity.

- Responsible for the administration of all medications and treatments including documentation and follow-up on assigned units.
- ....
- Assists the Unit Manager in the direction of all licensed personnel who provide health care and nursing services on the unit.
- Observes staff activity to provide support, guidance and direction.
- Reports any significant changes or outcomes with current prescribed treatments to the Unit Manager or Shift Supervisor if Unit Manager is unavailable.
- Adheres to nursing unit operations by initiating, coordinating, and enforcing program, operational, and personnel policies and procedures.
- ...
- Submits timely incident reports that are complete, thorough and accurate.
- Immediately reports any suspected reportable incidents to the Director of Long term Care Services, Director of Nursing Services (or his/her designee) and /or the Assistant Director of Nursing.
- Maintains a cooperative relationship among the nursing unit by communicating information; provides support, guidance and feedback; responds to requests, problems (actual or potential); building rapport and participating in team problem-solving methods.
- ...
- Provides comprehensive report to oncoming shift; providing time for clarification of information, questions and the follow up of all identified shift report concerns.
- ...
- Serves as a resource to staff for solving clinical problems.
- ...
- Participates in the orientation and training of new nursing staff.
- Assists with staff Competency Review...

See Joint Exhibit 13.

7. The LPN's duties and responsibilities include the following:

Provides medication administration and prescribed treatments including all required documentation on assigned unit. Directs and assists LNAs to ensure the residents'/clients' plan of care is followed, providing physical and psychological support for residents/clients.

Essential Job Functions:

- ...
- Provides overall direction and coordination of MNA and LNA activity.
- Responsible for the administration of all medications and treatments including documentation and follow-up on assigned units.
- ....
- Assists the Unit Manager in the direction of all licensed personnel who provide health care and nursing services on the unit.
- Observes staff activity to provide support, guidance and direction.

- Reports any significant changes or outcomes with current prescribed treatments to the Unit Manager or Shift Supervisor if Unit Manger is unavailable.
- Adheres to nursing unit operations by initiating, coordinating, and enforcing program, operational, and personnel policies and procedures.
- ...
- Submits timely incident reports that are complete, thorough and accurate.
- Immediately reports any suspected reportable incidents to the Director of Long term Care Services, Director of Nursing Services (or his/her designee) and /or the Assistant Director of Nursing.
- Maintains a cooperative relationship among the nursing unit by communicating information; provides support, guidance and feedback; responds to requests, problems (actual or potential); building rapport and participating in team problem-solving methods.
- ...
- Provides comprehensive report to oncoming shift; providing time for clarification of information, questions and the follow up of all identified shift report concerns.
- ...
- Serves as a resource to staff for solving clinical problems.
- ...
- Participates in the orientation and training of new nursing staff.
- Assists with staff Competency Review...

See Joint Exhibit 14.

8. Job descriptions for MNAs, LNAs, RNs, and LPNs provide that “this position has no supervisory responsibilities.” RNs<sup>2</sup>, LPNs, LNAs, and MNAs do not have authority to hire, fire, discipline or evaluate other employees in the proposed bargaining unit. They don’t have authority to recommend discipline, suspension, termination, promotion, or pay raises. They do not track employee attendance and do not schedule, or have authority to change, employees’ work hours. They do not process or approve employees’ leave requests. They do not have authority to send another employee home and, in the absence of a Supervisor or Director/Assistant Director of Nursing, they do not take over their supervisory responsibilities. They do not have authority to conduct internal affairs investigations and are not involved in the hiring process.

9. The Unit Manager’s duties and responsibilities include the following:

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<sup>2</sup>Excluding the RN “Supervisors” discussed in Findings of Fact 3.

Supervises and coordinates activities of nursing personnel on assigned unit ensuring consistent quality care is provided to all residents at all times. Promotes and restores resident's /client's health by developing day-to-day management and long-term planning of the resident's /client's care needs directing and developing staff; collaborating with physicians and multidisciplinary professionals; providing physical and psychological support for residents/clients.

Essential Job Functions:

...

- Provides and promotes quality customer service(s) at all times
- Follows and promotes all facility policies, procedures and standards directing nursing department activities.
- Supervises licensed nursing staff who provide health care and nursing services on the unit.
- Completes resident / client care requirements by scheduling and assigning nursing staff; follows up on work results.
- Assesses care requirements and assigns staff as appropriate.
- Makes rounds throughout the day
  - to ensure continuity of care is provided to all residents/ client [sic] 24 hours a day, 7 days a week
  - to promptly identify and respond to changes in residents'/clients' condition
  - to identify opportunities to improve resident/client services and increase resident/client satisfaction
  - to observe staff activity and provide support and direction
- Reviews shift reports daily. Follows up on all issues identified.

...

- Immediately reports any suspected reportable incidents to the Director of Long Term Care Services, Director of Nursing Services (or his/her designee) and /or the Assistant Director of Nursing.
- Assists in the investigation of any abuse and/or neglect or suspected abuse and/or neglect allegations according to facility policies and procedures.
- Ensures all incident reports are complete, accurate and submitted in a timely manner...

See Joint Exhibit 14.

10. The Unit Manager job description provides in part as follows:

Responsible for the overall direction, coordination and evaluation of Charge Nurses, MNAs and LNAs on assigned units. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include planning, assigning, and directing work; appraising performance; competing timely performance evaluations; rewarding and disciplining employees; addressing complaints and resolving problems.

See Joint Exhibit 15. The Unit Managers conduct performance evaluations of employees who

work on the dayshift (7:00 a.m. – 3:00 p.m.), including LNAs and MNAs. They have authority to reward and discipline employees and to recommend a pay increase.

11. Currently, pay raises are determined by the Board of Commissioners based on the County budget. The same percentage of a raise is awarded to the employees across the board. The amount of a pay raise is not based on an employee performance but, in order to qualify to receive a raise, an employee must reach a certain evaluation score. For employees on the dayshift, these scores are determined by Unit Managers. For employees on night and weekend shift, these scores are determined by the Supervisors referenced in Findings of Fact 3.

12. The County Disciplinary Action Process has the following steps: (1) letter of counsel; (2) written warning; (3) suspension with or without pay; (4) demotion; (5) termination. See Joint Exhibit 1.

13. LNAs, MNAs, LPNs, RNs, Unit Manager as well as all other employees of the Nursing Home have authority to complete and submit a report called "Communication" if they witness a violation of the Nursing Home policies, such as an abuse of a resident. "Communications" are submitted to the Director/Assistant Director of Nursing, who decides how to proceed. For example, the Director might investigate and then issue discipline. The Communication is not a "letter of counsel" or a "written warning" (steps 1 and 2 of County disciplinary procedure, respectively). The Director has discretion as to whether to act upon a "Communication" and whether to place a "Communication" in a personnel file, if and when a discipline is issued. In the absence of a disciplinary action, the "Communications" are not placed in employee personnel files.

14. Nursing Administrative Assistants perform general clerical duties for the Nursing Department, including, among other things, faxing, scanning, copying, filing, entering new employee schedules into Kronos payroll system, answering telephones, and assessing daily time

keeping entries to ensure data is accurate.

15. Receptionists, among other things, monitor alarm systems and security cameras, operate a multi-line telephone system to answer and redirect incoming calls, maintain radio contact with maintenance department and nursing home vehicles, welcome on-site visitors and direct them to appropriate area, and receive, sort, and route mail.

16. Activity Aides, among other things, develop and lead programs and individual activity interventions that meet the social, religious, physical, and cognitive needs of all residents, work in groups or one-on-one with the residents, plan and participate in community outings, including transporting residents on facility van, and assist in selected aspects of patient services such as feeding, transfers, and mobility.

17. Housekeeping Aids, among other things, clean rooms and halls for the nursing home, empty wastebaskets, replenish bathroom supplies, replace light bulbs, move furniture, and assist in laundry functions.

18. Laundry Aids, among other things, perform laundry service for the Nursing Home, retrieve and sort residents' personal laundry or facilities' soiled linens for washing and drying, fold and place laundry on carts, hangers or shelves, iron bed and table linens, and sort residents' personal items and linens and deliver them to an appropriate floor and room.

19. The Nursing Home Social Worker position has three levels: Social Worker I, Social Worker II, and Social Worker III. Social Workers I, II, and III report to the Director of Social Services.

20. The Social Worker I job description provides that "[t]his job has no supervisory responsibilities. The duties and responsibilities of the Social Worker I include the following:

Advocates, counsels and aids individuals and families requiring assistance by performing the following duties.



Essential Job Functions:

- Interviews clients with problems such as personal and family adjustments, finances, food, clothing, housing, and physical and mental impairments to determine nature and degree of problem.
- ...
- Counsels clients individually, in family, or in other small groups regarding plans for meeting needs, and aids clients to mobilize inner capacities and environmental resources to improve social functioning.
- ...
- Determines client's eligibility for financial assistance and provides financial counseling.
- Complies with and explains all policies and procedures of the nursing home.
- Collaborates on and coordinates patient concerns with other nursing home departments...

See Joint Exhibit 16.

21. The Social Worker II job description provides that "[t]his job has no supervisory responsibilities" and that the Social Worker II "[a]dvocates, counsels and aids individuals and families requiring assistance..." The duties and responsibilities of Social Worker II are essentially similar to those of Social Worker I. The Social Worker II also [c]omplies with and explains all policies and procedures of the nursing home" and "[c]ollaborates on and coordinates patient concerns with other nursing home departments." See Joint Exhibit 17.

22. The duties and responsibilities of the Social Worker III are essentially similar to those of the Social Workers I and II except for the following: the Social Worker III has the authority to supervise student interns, to train new social workers, and to assume the duties of the Director of Social Services in the Director's absence. See Joint Exhibit 18. The County did not offer evidence concerning the duties of the Director of Social Services.

23. In the absence of the Social Services Director, the Social Worker III does not have authority to send a Social Worker I or II home, even in an emergency situation. If, for example, an employee shows up to work intoxicated in the absence of the Director, the Social Worker III does not have the authority to send this employee home but, instead, is required to contact the Nursing Home Administrator, who will decide how to proceed. There is no evidence

that the Social Worker III conducts performance evaluations of Social Workers I and II, approves their leave requests, schedules their work hours or has the authority to hire, fire, or suspend Social Workers I and II or to recommend their suspension, termination or promotion.

24. The County Personnel Policies and Procedures Manual (Manual) defines a part time employee as an “employee whose regularly scheduled workweek is less than 40 hours but 24 or more hours.” A full time employee is an “employee whose regularly scheduled workweek is at least 40 hours.” See Joint Exhibit 1.

25. Subsection 2-26 of the Manual defines an “Intermittent Employee” as “[a]n employee whose *regularly scheduled* workweek is less than 24 hours (including per diem).” See Joint Exhibit 1 (emphasis added).

26. The Nursing Home operates 24 hours a day, 7 days a week and to fulfill its duties and responsibilities to the residents, it relies on full time, part time, and so called “per diem” employees, as well as on “contract employees”/subcontractors.<sup>3</sup>

27. “Per diem” employees are County employees. The Nursing Home routinely utilizes “per diem” RNs, LPNs, LNAs, MNAs, and Receptionists. As of the time of the filing of the petition, the proposed bargaining unit had approximately 37 “per diem” employees, including 10 in a probationary status.

28. The “per diem” employees are hourly employees, like their “full time” or “part time” co-workers, but they are not supposed to work more than 29 hours per week. See Joint Exhibit 20. However, at least 9 out of the 27 non-probationary “per diem” employees periodically worked more than 29 hours per week in 2018. See Joint Exhibit 23.

29. “Per diem” employees perform the same work in the same working conditions as

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<sup>3</sup> County Finance Director Charles Nickerson testified that due to the general shortage of nursing employees, the County has to rely heavily on “contract employees” for its nursing department.

their “full time” and “part time” co-workers.

30. “Per diem” employees provide their availability to work on a monthly basis, are scheduled a month in advance based on the dates they provide, and work in accordance with this monthly schedule. The County does not contact them and ask them to work on an emergency basis when the need arises.

31. Under the current personnel plan, “per diem” employees are not eligible for leave accrual, health or dental insurance, life insurance, longevity pay, and many of the other benefits available to “full time” and “part time” employees. They do not have step increases. Instead, their pay rate is determined by the Nursing Home Administrator and it has not changed since 2013. See Joint Exhibit 20.

32. “Per diem” employees receive weekend and shift differential pay and are eligible for time and one half pay on six holidays per year. See Joint Exhibit 20.

33. “Per diem” employees “[m]ust be available for work on either Thanksgiving or Christmas and “[m]ust be available to work two weekend days a month.” See Joint Exhibit 20.

34. All “per diem” employees must sign a “Per Diem Non Availability Acknowledgement” which states as follows: “I understand that should I not submit monthly calendars of availability and have not worked for two months this action will be deemed as my voluntary resignation from *County employment*.” See County Exhibit A (emphasis added).

35. Like other Nursing Home employees, “per diem” employees are evaluated annually.

36. Employees may convert to “per diem” status by completing a Request for Time Change to Per Diem form, in which the employee must identify his or her current shift (e.g. 7:00 a.m. – 3:00 p.m., 3:00 p.m. – 11:00 p.m., 11:00 p.m. – 7:00 a.m.) and a number of hours worked

bi-weekly. The employee is also required to indicate on which "per diem" shift she intends to work ("Change to Per Diem shift..."). See County Exhibit B.

37. The continued employment of "full time," "part time," and "per diem" employees is "based on maintaining a satisfactory level of performance and adherence to all county and department policies and procedures;" and the offer of employment for these categories of employees is "contingent upon adequately completing a pre-employment physical exam ... as well as a drug screening." See County Exhibits C & D. Like full time and part time employees, "per diem" employees must satisfactorily complete a one-year probationary period. See Joint Exhibit 4 (employee list).

38. 21 out of the 27 non-probationary "per diem" employees were employed throughout 2018 (52 weeks), and worked a total of 11,540.75 hours, averaging approximately 549.5 hours per employee per year, or 10.5 hours per employee per week. Eight of these employees worked 40-52 weeks in 2018; seven worked 30-39 weeks, four worked 20-29 weeks, and two worked less than 20 weeks. See Joint Exhibit 23.<sup>4</sup>

39. All employees in the proposed bargaining unit function within the same organizational unit, the Rockingham County Nursing Home, and are subject to the Nursing Home policies and procedures. The funds for wages and benefits, if any, of all employees in the proposed bargaining unit are approved by the County Delegation.

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<sup>4</sup>Joint Exhibits (JE) 20 and 22 are not relied upon in this decision as they contain erroneous and misleading information. For example, JE 20 states that "Per Diem Nursing Admin Staff" worked 0.00 hours in 2018. However, JE 23 shows that at least 3 "per diem" receptionists, i.e. "admin staff," worked a total of 2125.5 hours in 2018. Similarly, JE 22 contains misleading information. For example, "per diem" LPN's average hours are indicated as 46.61 - apparently, a total number of hours per year, 2423.75 divided by 52 weeks, despite the fact that some of employees on this list, like Benjamin Gregory, worked only for one month, and not full year, in 2018 (no reason for such a short tenure was indicated in the exhibit). Also, the average hours per week for LPN Casey Manock are shown to be 6.46 - apparently, a total number of her 2018 hours (366) divided by 52 weeks. However, JE 23 shows that Ms. Manock was employed by the County for only about 22 weeks in 2018, and not 52, as she was hired on April 29, 2018 and appears to have stopped her "per diem" employment at the end of September 2018. Therefore, based on information provided in JE 23, Ms. Manock's average hours per week, based on her total 2018 employment of 22 weeks, were 15.27 and not 6.46. The representatives for both parties in this case are advised to prepare their submissions to this tribunal more carefully in the future.

40. Most of their terms and conditions of employment are set forth in the Manual, which applies to all employees in the proposed bargaining unit. This Manual covers, among others, the following terms and conditions of employment: pay plan and compensation, step increases, promotion, demotion, reappointment and transfer rates, longevity pay, shift differential, overtime, hours of work, leave accrual rates and usage, holidays, sick leave pool, hiring procedures, performance evaluations, promotions, demotions, disciplinary action process, termination, health and dental insurance and other benefits, personnel files, and grievance policy.

41. All employees in the proposed bargaining unit, as part of their work, have direct contact with the Nursing Home residents. They also regularly interact with each other at work and support each other in the performance of the assigned tasks. All employees in the proposed unit work as a team for the same goal – providing care for the Nursing Home residents.

42. All employees in the proposed bargaining unit “[p]romote the mission, visions, and values of the facility” and “[s]upport Resident Rights as defined in facility policies and procedures.” See position job descriptions.

43. All employees in the proposed bargaining unit work in the same geographic location (in the same building).

44. Employees in the proposed bargaining unit have a strong “self-felt” community of interest.

45. The Assisted Living facility is located in the same building as the Nursing Home facility but it is a separate facility. The Nursing Home and Assisted Living do not share the nursing staff. An employee who wishes to transfer from the Nursing Home to the Assisted Living has to quit his/her job at the Nursing Home and apply to be hired at the Assisted Living. The level of care provided to Assisted Living residents is significantly different from that provided to Nursing Home residents: while the Assisted Living residents are largely independent

and can care for themselves, the Nursing Home residents are completely dependent on the Nursing Home employees, who assist them with dressing, bathing, feeding, medications, and personal care. Consequently, the skills and labor required to care for Nursing Home residents are different from those required to care for Assisted Living residents.

46. Most of the Nursing Home employees do not interact with the Assisted Living employees on regular basis; and the Nursing Home employees do not share a “self-felt” community of interest with the Assisted Living employees.

### **Decision and Order**

#### **Decision Summary**

The so called “per diem” employees are part time public employees and not irregular or on call employees within the meaning of RSA 273-A:1, IX (d) and are, therefore, included in the bargaining unit. The RNs, LPNs, and Social Worker III are not supervisory employees within the meaning of RSA 273-A:8 and are, therefore, included in the bargaining unit. The Unit Managers are supervisory employees within the meaning of RSA 273-A:8 and are, therefore, excluded from the bargaining unit. The employees in the proposed bargaining unit have a sufficient community of interest such that it is reasonable for them to negotiate jointly. The Assistant Living employees are not included in the bargaining unit.

#### **Jurisdiction**

The PELRB has jurisdiction to determine the appropriate bargaining unit and to certify the exclusive representative thereof. See RSA 273-A:8, RSA 273-A:10, and Admin. R. Pub 302.

#### **Discussion**

The New Hampshire legislature has recognized the “right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof . . .” Laws 1975, 490:1.” See *Appeal of International Brotherhood of*

*Police Officers*, 148 N.H. 194, 196 (2002). RSA 273-A:8, I vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof.

### **I. "Per Diem" Employees**

The County argues that "per diem" employees should be excluded from the proposed bargaining unit because they are not "public employees" under RSA 273-A:1, IX. RSA 273-A:1, IX defines a public employee as "any person employed by a public employer except...(d) [p]ersons in a probationary or temporary status, or employed seasonally, irregularly, or on call."<sup>5</sup> RSA 273-A:1, IX (d) does not exclude regularly scheduled part-time employees. See also *State Employees' Association of New Hampshire, Inc., SEIU Local 1984 v. State of New Hampshire, Liquor Commission*, PELRB Decision No. 2013-168 (*Liquor Commission*); *Teamsters Local 633 of New Hampshire v. Town of Bow Police Department*, PELRB Decision No. 94-33 (April 6, 1994). The statutory language does not contain the term "per diem." RSA 273-A:1, IX. The designation of a part time employee as "per diem" "is not dispositive nor controlling of an individual employee's status under RSA 273-A:1, IX (d)." *International Brotherhood of Teamsters, Local 633 of N.H. and State of New Hampshire, Administrative Office of the Courts*, PELRB Decision No. 2009-048. The fact that some employees work reduced hours is also not determinative as "[a] reduced work schedule is the sine qua non, or essence, of part-time employment, and the fact of part-time employment is not enough, by itself, to exclude an employee from a proposed bargaining unit." *Id.*

Part time employees are "public employees" absent evidence that they are "persons in a ... temporary status, or employed seasonally, irregularly or on call." See RSA 273-A:1, IX (d). See also *Liquor Commission*, *supra*, PELRB Decision No. 2013-168. "Irregular" employees are

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<sup>5</sup> Under RSA 273-A:8, probationary employees cannot vote in any representation election but they are "counted to satisfy the employee minimum number [10] requirement."

those “lacking continuity or regularity of occurrence, activity, or function;” and “on call” employees are employees “ready to respond to a summons or command.” See *In re Town of Stratham*, 144 N.H. 429, 431 (1999).<sup>6</sup>

In *Liquor Commission*, supra, PELRB Decision No. 2013-168, the PELRB found that non-seasonal part time retail employees working for the Liquor Commission were “public employees” within the meaning of the RSA 273-A:1, IX (d), as they were not irregular, temporary or on call employees. In that case, the union filed a grievance on behalf of part time employees and the State refused to process the grievance on the ground that part time employees were employed “irregularly” and were not in the bargaining unit. *Id.* The State argued that the part time employees worked “irregular” schedules; that, under the personnel rules, full time employees enjoyed certain rights and protections that were not extended to part time employees; and that, therefore, part time employees were “irregular” employees under the Act. *Id.* The PELRB disagreed with the State, reasoning as follows:

We are dealing in this case with state employees working in a retail environment ... Stores are now open weekends and holidays, and there are day shifts, night shifts, and weekend shifts. We conclude that variation in weekly work schedules for such employees is to be expected, particularly given the heavy reliance on a part time work force. We also note ... that the work schedules of both full time and part time employees are not consistent from week to week. More importantly, the fact that part time employees don’t always work the same number of hours each week, or work on the same day, or work the same shift every week does not mean that their employment lacks “continuity or regularity of occurrence, activity, or function.” Many part time employees are regularly scheduled to work on a year round basis, and not just during the busy seasons. It is clear the Liquor Commission could not staff its retail operations if this were not the case.

Also, the differing treatment of full time and part time employees under the personnel rules does not establish that part time employees are not public employees under the Act. There is nothing in the 1976 certification, the Act, or any court or PELRB decision which serves to exclude part time employees from the definition of public employee or from the certified bargaining unit on this basis... The fact that part time employees may be employees at will who are not entitled to any administrative review of a change in their employment status does not

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<sup>6</sup>Here, the County does not appear to claim, nor did it provide sufficient evidence to prove, that “per diem” employees are temporary or seasonal employees.



make them temporary employees under the Act. There is otherwise a lack of evidence indicating that such employees are regularly or frequently terminated, or usually or typically only hired for a limited period of time, or other similar evidence which would support a finding that such employees are "temporary." This is not to say that part time employees are guaranteed employment of any particular duration, nor is to say that their employment can only be terminated for cause. However, we don't equate "at will employment" with "temporary" employment under the Act.

*Id.* The PELRB found that the State committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), and (g) when it refused to recognize the union as an exclusive representative of non-seasonal part time employees of the Liquor Commission.

In contrast, in *In re Town of Stratham*, supra, 144 N.H. at 431, part time officers worked "substantial hours" but had no set day to work and only worked when a shift opened up because a full time officer was unavailable. See *id.* They were excluded from the bargaining unit under consideration because they were deemed "on-call employees who work on an irregular basis." See *id.* See also *Teamsters Local 633 v. Town of Loudon*, Decision No. 2018-209 (excluding part time patrol officers from unit because they were on call employees working only if shift opened up due to absence of other patrol officers).

In this case, several joint and County exhibits demonstrate that the County itself considers "per diems" "regularly scheduled" employees. See Joint Exhibit 1, subsection 2-26. They are required to identify the shifts they will work when they complete a Change to Per Diem form. They are required to be available to work at least 2 weekends per month and either Thanksgiving or Christmas and if they do not work for more than 2 consecutive months, their employment is terminated. Therefore, "per diem" employees here cannot be away from work for extended periods of time without losing their jobs. Finally, they are required to submit their availability on a monthly basis, their work hours/schedule are set a month in advance, and they come to work based on a set schedule, just like other County employees. Whether a work schedule is set a month in advance or a few months/year in advance is of no consequence in

determining whether one is a "public employee" under the statute. In addition, "per diem" employees here are clearly not "on call" employees as the employer never calls them a day or two in advance based on need or an emergency. Instead, they are expected to and do work the hours scheduled a month ahead.

Furthermore, the "per diem" employees are performing the same work in the same working conditions as their "full-time" and "part-time" co-workers. As was true in *Liquor Commission* case, the County work environment is not the typical 9-5, Monday to Friday work environment. The County operates 24 hours a day, 7 days a week and must rely on the group of employees it calls "per diem" to fully staff and conduct Nursing Home operations. The "per diems" are a necessary and important part of the workforce, work through the year, and are regularly relied upon by the County to meet staffing requirements. The County's "per diem" characterization does not determine whether these employees are public employees within the meaning of RSA 273-A. In reality, they are part time employees who are scheduled differently from other County part time employees. Because of their reduced work schedule, they are not eligible for certain benefits the County offers to other co-workers, but this does not mean they must be excluded from a bargaining unit which includes employees who are currently eligible for the benefits. If placed in the bargaining unit, the terms and conditions of employment for all bargaining unit employees, including benefit eligibility, must be negotiated.

In this case, like in *Liquor Commission*, the evidence shows that "per diem" employees are part time employees who usually, albeit not always, work less than 29 hours a week but are still regularly scheduled to work throughout the year. RSA 273-A:1, IX does not differentiate between full time and part time employees nor does it set the number of hours an employee must work in order to be recognized as a "public employee." The County's internal classification system of "part time" (more than 24 hours), "full time" (40 and more hours) and "per diem"

employees (fewer than 29 hours) does not establish which employees are “public employees” within the meaning of RSA 273-A, IX.<sup>7</sup> Just because an employee works a reduced schedule does not mean that the employee forfeits the right to union representation and the benefits of collective bargaining.

It was the County’s burden to prove by a preponderance of the evidence<sup>8</sup> that the so called “per diem” employees are irregular or on call employees and the County failed to satisfy this burden.<sup>9</sup> Based on the foregoing, “per diem” employees are public employees within the meaning of RSA 273-A and are appropriately included in the bargaining unit.

## II. Supervisory Employees

The County also argues that the proposed unit inappropriately includes supervisory employees (RNs, LPN, Unit Managers, and Social Worker III) in violation of RSA 273-A:8, II. Under RSA 273-A:8, II, “[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise.” Supervisory employees are separated from the employees they supervise “to avoid conflicts between the two groups because of the differing duties and relationships which characterize each group.” *Appeal of Town of Stratham*, supra, 144 N.H. at 432. Employees with certain authority, “regardless of whether it is presently exercised,” are supervisors under RSA

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<sup>7</sup>Notably, the designation “per diem” by its definition does not seem to apply to the employees at issue in this case. The phrase “per diem” means “[b]y the day; an allowance or amount of so much per day... Generally, as used in connection with compensation, wages or salary, means pay for a day’s service.” Black’s Law Dictionary 1293 (4th ed.1968). The so-called “per diem” employees in this case are paid on hourly basis, and not a flat daily rate usually paid to per diem employees. See Joint Exhibit 20.

<sup>8</sup>Admin. Rule Pub 201.06 (c) provides that in all adjudicatory hearings the party asserting the affirmative of a proposition, like the County here, “shall bear the burden of proving the proposition by a preponderance of the evidence.”

<sup>9</sup>In support of its position, the County stated in its post-hearing brief that “per diem” employees are “*explicitly excluded*” from nursing home units in Merrimack (MCNH), Belknap (BCNH), Carrol, and Stratford (SCNH) Counties. With the exception of the Carrol County certification, PELRB Case No. M-0546 (May 31, 1990), this statement is not accurate. See PELRB Decisions Nos. 93-168, 95-80, 97-039, 2003-123 (no explicit exclusion of “per diems” in MCNH certification). See also PELRB Decision No. 2003-109 (same in BCNH certification); PELRB Decision No. 2014-203 (SCNH certification excludes “on call” employees, not “per diems”).

273-A:8, II. See *Appeal of University System of N.H.*, 131 N.H. 368, 376 (1988).

The Supreme Court has recognized that “[d]etermining where in the pyramid of administrative functions an employee becomes part of ‘management’ is not a simple task.” *In re Nashua Association of School Principals*, 119 N.H. 90, 93 (1979). In determining whether an employee exercises a “supervisory authority” within the meaning of RSA 273-A:8, II, important factors to consider include “the employee’s authority to evaluate other employees, the employee’s supervisory role, and the employee’s disciplinary authority.” *Appeal of Town of Stratham*, *supra*, 144 N.H. at 432. See also *Appeal of East Derry Fire Precinct*, 137 N.H. 607, 610 (1993). The fact that an employee has some authority in the areas of discipline, evaluation, and hiring “is the start, and not the end, of the analysis because positions possessing some authority in these areas are not per se supervisors within the meaning of the statute.” *Tilton Police Union, NEPBA Local 29 v. Town of Tilton*, PELRB Decision No. 2007-100. A proper assessment of whether a position is supervisory “requires consideration of matters such as the nature, extent, character and quality of [employee’s] authority and involvement in the areas of discipline, evaluations, and hiring.” *Id.*

“[S]ome employees performing supervisory functions in accordance with professional norms will not be vested with the ‘supervisory authority involving the significant exercise of discretion’ described by RSA 273-A:8, II.” *Appeal of East Derry Fire Precinct*, *supra*, 137 N.H. at 611. A supervisory relationship exists “when the supervisor is *genuinely vested with significant supervisory authority* that may be exerted or withheld depending on his or her discretion.” *International Chemical Workers Union Council and Hillsborough County Nursing Home*, PELRB Decision No. 1999-079 (emphasis added).

In *Appeal of Town of Moultonborough*, 164 N.H. 257, 266-67 (2012), the corporal and sergeants were authorized to evaluate subordinate officers in the proposed unit and the

evaluations were considered in determining step increases. *Id.* at 265-66. They were in charge of the department in the chief's absence and were involved in certain aspects of the hiring process. *Id.* at 266. They were authorized to issue verbal counseling and written reprimands. *Id.* The Supreme Court found that the corporal and sergeants had sufficient supervisory responsibility over subordinate officers so that the inclusion of them in the same unit was unreasonable. *Id.* at 266-67. Similarly, in *Appeal of Town of Stratham*, supra, 144 N.H. at 432, the sergeant performed evaluations, assigned shifts, and had authority to discipline fellow employees in emergencies. *Id.* The Court found that the sergeant was a supervisory employee within the meaning of RSA 273-A:8, II. *Id.*

In contrast, in *Specialists of Monadnock District, SAU 93/NEA-NH and Monadnock Regional School District, SAU 93*, PELRB Decision No. 2012-086, the PELRB included Speech Language Pathologists (SLPs) and Occupational Therapists (OTs) in the same unit with Speech Language Pathology Assistants and Occupational Therapy Assistants because the evidence was insufficient to establish that they had "supervisory authority involving the significant exercise of discretion" over the assistants. In *Monadnock*, SLPs and OTs did not have authority to, and did not, hire, discipline, demote, promote, or terminate the assistants; nor did they have authority to recommend such actions. *Id.* Although SLPs and OTs had professional responsibility to provide clinical oversight to the assistants in accordance with professional norms, this kind of oversight was not "supervision" within the meaning of RSA 273-A:8, II, as it did not involve evaluation of employees for the purposes of discipline, promotion, demotion, pay increases, or termination. Although they completed checklists concerning the assistants' performance, these checklists had no effect on the assistants' compensation or on decisions to discipline, promote, demote, or terminate the assistants. See also *Appeal of City of Concord*, 123 N.H. 256, 257-58 (1983) (finding that fire department battalion chiefs were not statutory supervisory employees

“[b]ecause the record does not indicate that the battalion chiefs exercise supervisory authority entailing significant discretion”); *University System of New Hampshire v. State of New Hampshire*, 117 N.H. 96, 102-103 (1977) (affirming board’s determination that department chairs, who acted as liaisons between faculty and dean, made recommendations as to performance, tenure, hiring, and firing but did not possess final authority in these areas were not statutory supervisory employees).

#### **a. Unit Managers**

In this case, Unit Managers are supervisory employees within the meaning of RSA 273-A:8. They conduct performance evaluations of proposed bargaining unit employees working on dayshifts. In these evaluations they assign a score to each evaluated employee. This score is used to determine whether an employee will qualify for a raise. Unit Managers have authority to discipline and reward employees, to schedule, assign, and direct work, and to address complaints as well as provide overall direction and coordination. They have authority to assist in the Administration’s investigations of abuse or neglect allegations. For these reasons, the Unit Managers are statutory supervisory employees and are, therefore, excluded from the bargaining unit.

#### **b. RNs and LPNs**

The job descriptions for RNs and LPNs specifically state in the “Supervisory Responsibilities” subsection that these positions have “no direct supervisory responsibilities.” Like SLPs and OTs in *Monadnock*, LPNs and RNs here have no authority to, and do not actually, complete and/or sign performance evaluations of other employees in the proposed bargaining unit. They do not have authority to discipline other employees. Likewise, they do not have authority to hire or fire employees or to recommend promotions, suspensions, terminations, or pay raises. They do not set other employees’ work hours. They do not have authority to approve

or deny leave requests or to send another employee home in an emergency situation or in the absence of a superior.

The County's reliance on the fact that they complete so called "Communications" and submit them to a supervisor when a resident abuse or other reportable incident occurs is misplaced because all employees in the Nursing Home have the authority and an obligation to submit such a "Communication" reporting an abuse of a resident or other dangerous situation up the "chain of command." In addition, a "Communication" is not a "written letter of counsel" or a "written warning" (steps 1 and 2, respectively, of the County's formal disciplinary process).<sup>10</sup> It appears that RNs or LPNs do not know or have discretion to decide whether a "Communication" will end up in an employee's personnel file.

Furthermore, the "direction" and "guidance" RNs and LPNs have authority to provide to LNAs, MNAs or other employees do not rise to the level of discretion required by the statutory language and relevant case law to establish a supervisory status of an employee.

For the foregoing reasons, RNs and LPNs are not vested with a "supervisory authority involving the significant exercise of discretion" and, therefore, they are not supervisory employees within the meaning of RSA 273-A:8. Accordingly, they are included in the bargaining unit.

### **c. Social Worker III**

The duties of the Social Workers I, II, and III are essentially the same. The Social Worker III has no authority to hire, fire, discipline, or evaluate Social Workers I and II or any other employee. The Social Worker III does not recommend promotions, suspensions, terminations, or pay raises, nor does he/she approve or deny leave requests or sets schedules for Social Workers I

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<sup>10</sup>The County witnesses' answers to the hearing officer's question as to whether the so called "Communications" are placed in an employee's personnel file were vague and unresponsive. The County did not submit any "Communications," redacted or otherwise, into the record.

and II. The Social Worker III job description does provide that he/she assumes the duties of the Director of Social Services in the Director's absence. However, the County failed to offer evidence as to the duties of the Director of Social Services. When the undersigned hearing officer probed further into the HR Director's testimony that, in the absence of the Director, the Social Worker III can discipline Social Workers I and II, it became clear that the Social Worker III, in the absence of the Director, has no authority or discretion to discipline an employee or send an employee home even in an emergency situation (e.g. an employee coming to work intoxicated). In such a situation, the Social Worker III is required to report the situation to the Nursing Home Administrator who decides how to proceed.<sup>11</sup>

Based on the foregoing, the evidence is insufficient to prove that the Social Worker III is a person exercising supervisory authority involving the significant exercise of discretion, and therefore, the Social Worker III is not a supervisory employee within the meaning of RSA 273-A:8. See Admin. R. Pub 201.06 (c). Accordingly, the Social Worker III is appropriately included in the bargaining unit.

### **III. Community of Interest**

The County also argues that the employees in the proposed bargaining unit lack a community of interest. Simultaneously, the County argues that the Nursing Home employees have a sufficient community of interest with the Assisted Living employees so that they should be included in the same unit despite the Union's apparent lack of interest in representing the Assisted Living employees.

"The principal consideration in determining an appropriate bargaining unit is whether there exists a community of interest in working conditions such that it is reasonable for the

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<sup>11</sup>The HR Director's statements that in the absence of the Social Services Director, Social Worker III "may be involved" in discipline and would "facilitate any employment relations issues" were vague, evasive, and not helpful to the inquiry into the level of the Social Worker III supervisory discretion. Therefore, they are not credited.



employees to negotiate jointly.” *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995). RSA 273-A:8, I provides as follows:

The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the board *should* take into consideration the principle of community of interest. The community of interest may be exhibited by *one or more* of the following criteria, although it is not limited to such:

- (a) Employees with the same conditions of employment;
- (b) Employees with a history of workable and acceptable collective negotiations;
- (c) Employees in the same historic craft or profession;
- (d) Employees functioning within the same organizational unit.

(Emphasis added).

The PELRB rules provide additional criteria for determining whether a community of interest exists:

- (1) A common geographic location of the proposed unit;
- (2) The presence of:
  - a. Common work rules and personnel practices; and
  - b. Common salary and fringe benefit structures; and
- (3) The self-felt community of interest among employees.

Admin. R. Pub 302.02 (b). “[T]he statutory framework which guides PELRB decisions is flexible, and gives much discretion to the PELRB’s expertise. The statute and regulation require only that certain factors *may* be considered in determining whether a community of interest exists.” *Appeal of University System of New Hampshire*, 131 N.H. 368, 374 (1988) (emphasis in original). Under the statute and regulations, “the PELRB need not find each criterion satisfied in order to find that a community of interest exists.” *Appeal of Town of Newport*, *supra*, 140 N.H. at 352. In addition, the clear and unambiguous statutory language indicates that satisfaction of just one of the criteria listed in RSA 273-A:8, I may be sufficient to establish a requisite community of interest.

Moreover, when determining a community of interest, the focus must necessarily be on similarities, not the differences, between the positions in a proposed bargaining unit. See RSA 273-A:8, I and Pub 302.02 (b). *Teamsters Local 633 v. Town of Loudon*, Decision No. 2018-209. The differences in bargaining unit positions' training requirements or specific job duties do not preclude a formation of a cohesive bargaining unit that is otherwise appropriate under RSA 273-A:8, I and Pub 302.02 (b). See e.g. *SEA, Local 1984, Strafford County Nursing Home Employees and Strafford County Commissioners*, PELRB Decision No. 2014-203 (certifying unit of full time and part time RNs, head nurses, LPNs, nurse's aides, clerks, bookkeepers, custodians, maintenance, housekeepers, activity aids, washer/dryer operators, switchboard operators, and others); *ICWU Local 1046c, Merrimack County Nursing Home Employees v. Merrimack County Nursing Home*, PELRB Decision No. 2003-123 (certifying unit of RNs, LPNs, certified nursing assistants, social workers, barbers, activity aides, admissions secretary, unit aides, and others); *AFSCME Council #93 and Coos County Nursing Home Berlin Facility*, Case No. A-0527 (April 23, 1998) (certifying unit of receptionists, cooks, LPNs, certified nurses' aides, clerks, maintenance workers, security guards, housekeeping, laundry, and activity aides, resident services coordinators, and others); and *AFSCME, Council 93 and Sullivan County Nursing Home*, Case No. A-0518 (May 1, 1986) (certifying unit of RNs, certified nurse's aides, laundry, maintenance, and housekeeping workers, activities aids, LPNs, records secretaries, administrative office workers, and others).

#### **a. Nursing Home Employees**

In the present case, all employees in the proposed bargaining unit work in the same geographic location (in the same building).<sup>12</sup> They function within the same organizational unit,

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<sup>12</sup>The County's attempt to reduce a "common geographic location" to a room, as in its argument that laundry aides work in a different location (laundry room) from the nursing employees, is not supported by the language of the statute or the rule and would lead to absurd results.

County Nursing Home. The funds for wages and benefits, if any, of all employees in the proposed bargaining unit are approved by the County Delegation. All of employees in the proposed bargaining unit are subject to the Nursing Home policies and procedures. Most of their terms and conditions of employment are set forth in the Manual, which covers, among other things, compensation, step increases, promotions, demotions, transfers, longevity pay, shift differentials, overtime, holiday pay, hours of work, leave accrual rates and usage, holidays, hiring procedures, performance evaluations, disciplinary action process, terminations, health and dental insurance and other benefits, and grievance policy, i.e. topics that are, commonly, subjects of collective bargaining. The Manual applies to all employees in the proposed bargaining unit, although not every subject in the Manual applies to every employee. For example, some employees, including full time and part time employees, chose not to utilize the benefits, such as health and dental insurance, offered by the County and other employees are currently not eligible for some of the benefits listed in the Manual. This difference in eligibility for benefits does not by itself disqualify the employees from joining the same bargaining unit, as the purpose of joining a bargaining unit is to be able to negotiate collectively over the terms and conditions of employment, including eligibility for benefits.

Most importantly, all employees in the proposed unit work as a team for the same goal – providing care for the Nursing Home residents. All employees in the proposed bargaining unit regularly interact with each other at work and support each other in the performance of the assigned tasks. They have a strong “self-felt” community of interest.

Furthermore, the County’s argument that the positions in the proposed bargaining unit lack a community of interest because they require different levels of training and education is also without merit. RSA 273-A: 8, II clearly and unambiguously provides that the “board may certify a bargaining unit composed of professional and non-professional employees” if both

groups of employees, voting separately, vote to join the proposed bargaining unit. Naturally, professional and non-professional employees will have dissimilar educational, training, and experiential backgrounds. See RSA 273-A:1, VIII.<sup>13</sup> However, the legislature specifically authorized the PELRB to include the professional and non-professional employees in the same bargaining unit if they vote of join the same unit and if other statutory requirements are satisfied.

Based on the foregoing, the employees in the proposed Nursing Home bargaining unit have a sufficient community of interest such that it is reasonable for them to negotiate jointly.

#### **b. Assisted Living Facility Employees**

During its opening statement, the County commented that employees of the Assisted Living facility should be added to the proposed unit because, otherwise, the morale of the employees will be negatively affected. The County has not raised this issue in its answer or any subsequent pleadings and did not adequately address it in its post hearing brief. I find that this issue was not properly raised. Even assuming, *arguendo*, that this issue has been properly raised, I find that (1) the evidence is insufficient to support the County's request to add Assisted Living employees to the bargaining unit; and (2) the request should be denied for the same reasons the employer's request to enlarge the proposed bargaining unit was rejected in the *State Employees' Association of New Hampshire, SEIU Local 1984 and Plymouth State University*, Decision No. 2013-133.<sup>14</sup> See also *American Association of University Professors and University of New Hampshire Chapter and The University System of New Hampshire*, PELRB Decision No. 90-93

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<sup>13</sup>RSA 273-A:1, VIII provides that a professional employee "means any employee engaged in work predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgement, and requiring knowledge in a discipline customarily acquired in a formal program of advanced study."

<sup>14</sup>Attempting to enlarge a proposed bargaining unit is a tactic employers sometimes use in an effort to dilute the vote of employees who support the union. See Richard A. Posner, *Some Economics of Labor Law*, 51 U.Chi.L.Rev. 988, 1008 (1984)("the larger the unit is...the more difficult it will be for the union to obtain the majority vote that it needs in order to be designated the exclusive bargaining representative for the unit.").

(September 14, 1990).<sup>15</sup> For the foregoing reasons, the County's request to include the Assisted Living employees in the proposed bargaining unit is denied.

Finally, the evidence in this case is insufficient to prove that the formation of the Nursing Home employees bargaining unit will have a negative effect on government operations.

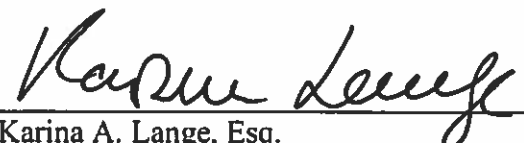
Based on the foregoing, the following bargaining unit is approved:

Housekeeping Aids, Laundry Aids, Licensed Nursing Assistants, Receptionists, Registered Nurses, Medical Nursing Assistants, Licensed Practical Nurses, Nursing Administrative Assistants, Activities Aids, and Social Workers I, II, and III.

The bargaining unit contains more than 10 employees with the same community of interest as required under RSA 273-A:8, I. Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the approved unit, if any. "State Employees' Association of New Hampshire, Inc., SEIU Local 1984" and "No Representative" will appear as choices on the ballot. An Order for Election shall issue in due course and a pre-election conference shall be conducted pursuant to Pub 303.02.

So ordered.

Date: 7/26/2019

  
Karina A. Lange, Esq.  
Staff Counsel/Hearing Officer

Distribution: Gary Snyder, Esq.  
Elizabeth Bailey, Esq.  
Bryanna K. Devonshire, Esq.

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<sup>15</sup>In *American Association of University Professors and University of New Hampshire Chapter and The University System of New Hampshire*, the PELRB denied the employer's request to expand a University of New Hampshire faculty bargaining unit by including Plymouth State College faculty, stating as follows: "Significantly, the faculty at Plymouth State College have not petitioned for an election and to adopt the System's scope of unit would require an election of employees who have not asked for it." PELRB Decision No. 90-93. In this case, the County offered no evidence that Assisted Living employees had any interest in joining the bargaining unit and being represented by the Union.