



NH Supreme Court affirmed this decision on July 22, 1988, Supreme Court Case No. 88-117.

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SULLIVAN COUNTY NURSING HOME :
 :
 Petitioner :
 :
 v. :
 :
 AMERICAN FEDERATION OF STATE, COUNTY :
 AND MUNICIPAL EMPLOYEES, COUNCIL 93 :
 Respondent :

CASE NO. A-0518:3
DECISION NO. 88-03

APPEARANCES

Representing Sullivan County Nursing Home:

Alan Hall, Esq., Counsel
Mary L. Horn, Administrator
Richard Breed, Asst. Superintendent
Robert A. Hemenway, Business Manager
Judith B. Brogren, Director of Nursing
Dorothy Nies, Employee
Fred Reno, Employee

Representing AFSCME, Council 93:

James J. Barry, Jr., Esq., Counsel
James C. Anderson, Staff Representative

BACKGROUND

The Sullivan County Commissioners and Mary L. Horn, Administrator through its Counsel, Attorney Alan Hall, petitioned the Board (PELRB) for modification of the existing unit of employees at the Sullivan County Nursing Home to exclude the position of registered nurses, exclusion as professionals, thereby separating them from the all-inclusive unit presently certified.

Counsel for the County cited several cases where the PELRB had ruled that registered nurses were excluded from bargaining units as professionals. He referred to the statutory language, emphasizing the education and licensing requirements under RSA 326-B:2 (VI), which qualified them as professionals and the provisions under RSA 273-A:8, II relative to professional employees.

AFSCME Council 93 (AFSCME) through its Counsel, Attorney James J. Barry, Jr., contended that the unit certified on May 1, 1986 included registered nurses and that exclusion was never a subject of negotiations until some ten months after certification. That registered nurses were listed as eligible voters for the certification election, without challenge, and in fact did vote.

FINDINGS OF FACT

After hearing all the testimony and considering the evidence and exhibits presented at the hearing, PELRB finds as follows:

1. On March 11, 1986, AFSCME petitioned for an election of a mutually agreed unit of employees at the Sullivan County Nursing Home which included the position of registered nurse.
2. Election was held at the County facilities on May 1, 1986 resulting in an 118 to 68 vote in favor of AFSCME and the unit was certified in accordance with RSA 273-A.
3. Since the May 1, 1986 election and certification of AFSCME as exclusive representative, PELRB has excluded nurses as "professional" under certain circumstances.
4. Since 1976, PELRB has certified other county nursing home units which included nurses.
5. In the case of Sullivan County, the parties had agreed to the inclusion of nurses and have conducted negotiations with the knowledge of the unit's development and background.
6. The inclusion or exclusion of certain positions in a bargaining unit is a matter for case by case determination. Generally, PELRB will not intervene when the parties agree on the unit in accordance with Rules and Regulations, Pub 302.01.
7. The subject of exclusion, or inclusion, of a position after certification under a modification petition must meet the requirements under PELRB Rules and Regulations, Pub 302.05.

DECISION AND ORDER

PELRB declines to second-guess the agreement reached by and between the parties at the creation of the unit in compliance with Pub 302.01 and subsequent certification; such matters should be subject to negotiations.

The petition for modification of the existing unit is denied and hereby is dismissed.


EDWARD J. HASELTINE, Chairman

Signed this 29th day of January, 1988.

Chairman Edward J. Haseltine, Richard E. Molan, Esq. and Seymour Osman voting in favor. Also present, Executive Director, Evelyn C. LeBrun.

Member Richard W. Roulx dissenting.

DISSENT

I dissent in the above decision because: While it is true that this Board did include Registered Nurses in the bargaining unit in their certification dated May 1, 1986, I am convinced that subsequently by their actions in calling RN's professionals and excluding them from rank and filed elections in Coos and Merrimack Counties, they have in fact "changed the circumstances" surrounding the formation of the unit designated by them on May 1, 1986 (Pub. 302.05).

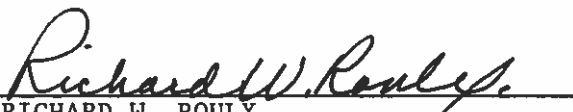
Testimony clearly showed that when negotiations commenced that the County immediately stated their position that RN's were professional employees and should not be included in the recognition article of the proposed contract.

Following several negotiation sessions and mediation the dispute was still there and the parties agreed in County Exhibit 5 that the question would be finally decided by this Board. In fact a CBA was signed in the Spring of 1987 which excluded RN's pending a decision by the Board.

The majority decision in ruling the petition was untimely filed, have effectively closed the door to the County to ever bring in the modification of the unit.

I believe this flies in the face of two parties who have agreed to let this Board decide the question. Prior to May, 1986 the Board had always maintained RN's to be included, however, their decision to call RN's professionals in the aforementioned elections have established case law to which they now say the modification to comply with that case law should not be heard.

It is evident that the parties, rather than starting lengthy litigation over the unit, decided to resolve their disagreement through negotiations. An action that this Board has always applauded. By the Board's refusal, they have thwarted the attempts of the parties involved to resolve the controversy and precluded a unit being modified to comply with their own case law. In my opinion, not consistent behavior.


RICHARD W. ROULX
Board Member