

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE: :
 :
 PETITION TO AMEND BARGAINING UNIT : Rep. Pet. No. 95-06-146
 DIVISION OF MENTAL RETARDATION :
 COMMUNITY NURSES (KENT & SUSSEX CO.) :

BACKGROUND

On or about June 8, 1995, a representation petition adequately supported by the signatures of at least 30% of the bargaining unit was filed with the Public Employment Relations Board. The petition seeks to modify the existing bargaining unit represented by AFSCME, District Council 81, Local 3514, by removing the classifications of Community Mental Retardation Program Nurse and Nurse Supervisor.

The Petition sets forth the following reasons for the request:

1. Kent Sussex Community Service is not a 24 hour per day nursing care facility.
2. Kent Sussex Community Service is funded under a different budget than Stockley Center.
3. Nursing duties and job descriptions at Kent Sussex Community Service are totally different than those at Stockley Center.
4. Concerns and issues at Stockley Center are not the same as those at Kent Sussex Community Service and, therefore, the collective bargaining agreement does not address the needs of the Kent Sussex Community Service nurses.
5. The Kent Sussex Community Service nurses are not under Stockley Center management.

After dismissing the affirmative defense of the State that the petition is untimely because of the contract bar doctrine, a hearing was scheduled for

October 24, 1995. A letter dated September 15, 1995, concerning the purpose of the hearing provides, in relevant part:

The Rules and Regulations of the PERB provide that a modification petition will be entertained "...in the event there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created or there is some other compelling reason for the Board to consider modifying the designated bargaining unit...

As these employees have been part of this unit since its creation, the parties should be prepared to demonstrate that a substantial modification or other compelling reasons for the modification do or do not exist.

Representatives of the Petitioner, the State and AFSCME, District Council 81, Local 3514 were present at the hearing and afforded the opportunity to fully participate.

ISSUE

1. Whether the petition is properly filed in that it satisfies the threshold conditions set forth in PERB Rule 3.4(8)?

2. If so, whether the classifications of Community Mental Retardation Nurse and Community Mental Retardation Nurse Supervisor are no longer appropriate for inclusion in the bargaining unit represented by AFSCME, Council 81, Local 3514?

OPINION

In order to establish that the petition is properly filed, the Petitioner must first satisfy one or more of the threshold criteria set forth in PERB Rule 3.4(8) that: (1) there has been a substantial change in the nature of the duties and working conditions of the position in question; or (2) a new job has been created; or (3) some other compelling reason warrants consideration of the petition.

The petition does not allege either that a new position was created or that a compelling circumstance justifies the Board's review of the unit. The Petitioner, therefore, must show a substantial change in the nature of the duties and working conditions of the Community Mental Retardation Program Nurse and Nurse Supervisor classifications since the unit was recertified as appropriate by the Secretary of Labor on February 26, 1982.

The arguments set forth by the Petitioner are not persuasive. Neither the funding of the community nurses, the fact that the Kent Sussex Community Services is not a twenty-four (24) hour nursing care service as is the Stockley Center, nor budgetary considerations address the issue of substantial change in the nature of the duties and working conditions of the affected positions. Furthermore, at that time the unit was certified in 1982, the nurses performed their duties at different locations.

The six (6) incumbents in the classification of Community Mental Retardation Program Nurse and Nurse Supervisor testified that the duties of the community nurse are significantly different from the nurses assigned to the Stockley Center. The record, however, establishes that significant differences existed between the positions within the Stockley Center and those within the Kent Sussex Community Service at the time the unit was certified in 1982.

There is no evidence of record that the job of community nurse significantly changed since 1982. While methodology undoubtedly has changed over the years, the primary responsibility of the community nurses continues to provide for the care of the mentally retarded.

The enumerated criteria for determining an appropriate bargaining unit do not include the preference of individual employees. The desire of the

employees concerning representation is expressed solely through the certification and decertification process where the majority of the bargaining unit members voting is controlling.

DECISION

Consistent with the foregoing discussion, Representation Petition No. 95-06-146 is dismissed for the reason that it fails to satisfy one or more of the threshold criteria set forth in PERB Rule 3.4(8).

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
Executive Director
Del. Public Employment Rel. Bd.

/s/Deborah Murray-Sheppard
Principal Assistant
Del. Public Employment Rel. Bd.

DATED: November 7, 1995