

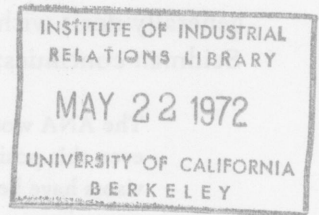


REPORTS

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COLLECTIVE BARGAINING IN THE PUBLIC SECTOR: UNIT DETERMINATION FOR NURSES*

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Hawaii Act 171 (Collective Bargaining in Public Employment Law) sets forth five optional units—registered professional nurses; nonprofessional hospital and institutional workers; firemen; policemen; and professional and scientific employees, other than registered professional nurses—which are given the option to constitute a separate unit, in which case supervisory employees may be included by mutual agreement among supervisory and nonsupervisory employees within the unit. If the supervisory employees are excluded, the law provides that such employees shall belong to Unit (2), supervisory employees in blue collar positions, or Unit (4), supervisory employees in white collar positions, whichever is appropriate.

The first optional unit determination hearings (involving firemen employed by the City and County of Honolulu, and the counties of Maui, Hawaii, and Kauai) were completed recently by the Hawaii Public Employment Relations Board. It is expected that unit determination hearings for the nurses' unit will be held in the near future.

In the previous two issues of the Newsletter, the *IRC Reports* section focused on unit determinations involving firemen and policemen. This *Report* deals with unit determinations involving employees in the nursing services employed by state and county governments. It summarizes the decisions of four state and city boards in seven unit determination cases.

BACKGROUND

Seidman has observed that when compared with most other employee groups in the United States, "nurses are at a great disadvantage with regard to legal protection of the right to organize and engage in collective bargaining." Most of them are not covered by federal law, and depending on the employer, they are subject to a variety of legislation—the National Labor Relations Act, the Railway Labor Act, by Executive Order 10988 [now 11491], or by state legislation, city ordinances, or executive orders of governors or mayors—or not protected by any collective bargaining law.¹

Pointing out that disagreements between hospital management and American Nursing Association affiliates (in both the private and public sectors) over the appropriate bargaining unit have

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¹ Joel Seidman, "Nurses and Collective Bargaining," *ILRR*, April 1970, p. 337.

generally dealt with the problem of determining which positions should be excluded as managerial, Seidman continues:

The ANA would exclude only the top nursing post in a hospital as managerial and not always even this position. The typical unit has covered staff and head nurses, and in some cases supervisors have been included, while in others staff nurses alone have comprised the unit . . . Where supervisory nurses are excluded from the larger bargaining unit, the state association may seek to represent them in a separate unit.²

STATE BOARDS' EXPERIENCE

In this examination, it was found that, like other unit determinations covering public sector employees, those affecting nursing employees have involved the issues of (1) the distinction of nursing employees from other public employees,³ (2) the distinction of professional employees from nonprofessional employees within the organization,⁴ (3) the distinction of managerial⁵ and supervisory⁶ personnel in such organization, and (4) the distinction of nursing employees involved with direct patient care from employees not involved with direct patient care in such organization.⁷

In all instances, the director, associate director, and assistant director were excluded from the bargaining unit as managerial employees. Where the line separating supervisory from nonsupervisory employees would be drawn depended, in the main, upon the degree of authority vested in key positions, usually the supervisor or head nurse. Where statutory provision was made for coverage of supervisory employees, as in New York, the head nurse was placed in a separate supervisory unit. In the sole Michigan case recorded, the head nurse was determined to be involved mainly with the supervision of hospital nurses, and, as the Michigan PERA is silent on the coverage of supervisors (other than supervisory personnel in five departments) under the act, she was excluded from the basic unit composed of teaching and hospital nurses. The Massachusetts Labor Relations Commission, on the other hand, in two cases included head nurses in the basic unit along with general duty nurses as it found that head nurses had limited administrative responsibilities and were mainly concerned with patient care.

A tabulation indicating inclusions and exclusions from the basic unit and separation of supervisory employees from such a unit, including the basis for these determinations, follows.

²Seidman, p. 348.

³See *City of Rome and Rome City Hospital Unit, Civil Service Employees Assn., Inc. and Local 1088, AFSCME, and Rome Hospital Nursing Service Assn.*, New York Public Employment Relations Board (NYPERB), Case Nos. C-0136 and C-0137, Oct. 23, 1968; *Chemung County, State of New York, and New York State Nurses Assn., and Chemung County Chapter Civil Service Employees Assn., Inc.*, NYPERB, Case No. C-0022, July 11, 1968; *County of Putnam and New York State Nurses Assn. and Putnam County Chapter, Civil Service Employees Assn., Inc.*, NYPERB, Case No. C-0393, Oct. 23, 1969.

⁴See *City of Rome* (1968); *War Memorial Hospital and AFSCME*, Michigan Labor Mediation Board (MLMB), Case No. R66 J-381, July 12, 1967.

⁵See *Quincy City Hospital and Massachusetts Nurses Assn.*, Massachusetts Labor Relations Commission (MLRC), Case No. CR-2951, June 9, 1965; *Chemung County* (1968); *County of Putnam* (1969).

⁶See *St. Luke's Hospital and Michigan Nurses Assn.*, MLMB, Case Nos. R67 G-247 and R67 G-248, June 18, 1968; *City of Rome* (1968).

⁷See *St. Luke's Hospital and Michigan Nurses Assn.* (1968).

UNIT DETERMINATION FOR NURSES
Hospital and Public Health

	Director	Associate Director	Assistant Director	Chief Admitting Officer	Supervisor		Assistant Supervisor	Head Nurse	Assistant Head Nurse	Instructor	Nurse
					Nonprof. Personnel	Nurses					
Massachusetts Labor Relations Commission Quincy Hospital (1965) University Hospital (1965)	Exc ¹ Exc ^{2a}	Exc ^{2a}	Exc ¹	Exc ¹	Exc ¹	Inc ² Inc ²	Inc ²	Inc ² Inc ²			Inc ²
Michigan Labor Mediation Board St. Luke's Hospital (1968)								Exc ³		Inc ⁴	
New York Public Employment Relations Board Chemung County (1968) City of Rome & Rome City Hospital (1968) County of Putnam (1970)	Exc ⁵ Exc ⁹					Sep ⁷		Sep ⁷	Sep ⁷		Inc ⁶ Inc ⁸ Inc ¹⁰
New York City Office of Collective Bargaining Dept. of Public Health (1969)			Exc ¹¹								Sep ¹²

¹ The director of nurses, supervisor of non-nursing personnel, assistant director of nursing education, and chief admitting officer were excluded because their duties were of a managerial nature involved with the formulation, determination and effectuation of hospital policies.

² Commission ruled that supervisors, head nurses, and registered nurses were not supervisors within the meaning of the Massachusetts Act because (1) they did not possess authority to hire and discharge employees or to effectively recommend such actions, (2) they receive a salary lower than that of general duty nurses who are nonsupervisory employees, (3) their exercise of independent judgment and discretion was no greater than that exercised by general duty nurses, (4) supervisors do not participate in enactment of hospital policies, while head nurses had limited administrative responsibilities, and (5) their main responsibility was concerned with patient care.

^{2a} Excluded for the same reason as in *Quincy Hospital* above.

- ³The Board found that although the head nurses treated patients, their principal responsibility was the supervision of hospital nurses.
- ⁴The Board decided to include teaching and hospital nurses in one unit (rather than two separate units) for the following reasons: (1) the close contact between teaching and staff RN's, (2) the fact that the school is part of the hospital administration, and (3) the record's failure to establish sufficient differentiation of community of interest between the teaching and staff RN's so as to preclude the establishment of a single overall unit of RN's.
- ⁵The director of nurses was excluded from the unit for the following reasons: (1) she is basically concerned with administrative duties, (2) she is in the highest possible pay grade and (3) can effectively recommend disciplinary procedures.
- ⁶The Director of Representation ruled an occupational unit (including nurses employed in the health and welfare departments but not including other non-nursing county employees) was the appropriate unit because of the community of interest separating nurses from other county employees.
- ⁷The supervising nurse, head nurse, and assistant head nurse were excluded from the basic unit and placed in a separate supervisory unit for the reason that their evaluating function, in addition to their position in the grievance procedure, gave rise to a sharp conflict of interest. Also included in the supervisory unit were assistant dietitians and the maintenance and heating foreman.
- ⁸RN's and LPN's (including nonprofessional employees such as nurses aides, ward clerks, ward orderlies, and O.R. technicians) were placed in the same unit separate from nonprofessional employees not employed in the nursing department for lack of evidence that there exists a community of interest between nursing and non-nursing department employees. The nonprofessionals employed in the nursing department were included with the nurses because of the strong community of interest evidenced. Part-time employees working on a "regular" basis (more than 15 hours a week) were also included in the unit because a substantial number of them are registered professional nurses who receive the same fringe benefits as full-time nurses and who have been included in the past within the unit represented in negotiations by the nurses association.
- ⁹The director of nursing was excluded from the basic unit because (1) 65 percent of her time was devoted to supervisory duties which created a conflict of interest and (2) consideration must be given to the administrative convenience of the employer.
- ¹⁰All RN's engaged in nursing services, nursing education, or nursing administration (excluding the Director of Nursing Services and Home Health Agency) were included in a unit separate from other county employees for the reason that nurses form a cohesive group having a substantially different community of interest from that of all other employees.
- ¹¹The assistant directors were determined to be managerial employees.
- ¹²The Office of Collective Bargaining determined that there were substantial differences in the responsibilities, requirements, training and functions involved in hospital and public health nurses' jobs.