

NYSNA v. City, 2 OCB 39 (BOC 1968) [Decision No. 39-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK STATE NURSES ASSOCIATION

DOCKET NO. RU-19-68

-and-

DECISION NO. 39-68

THE CITY OF NEW YORK

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DECISION AND CERTIFICATION

On March 4, 1968, the New York State Nurses Association filed a petition with the Board of Certification seeking certification as the collective bargaining representative of the Nurse-midwives employed in the Department of Hospitals. No other City agency employs Nurse-Midwives.

I. The Consent Agreement

The Association and the City have executed an "agreement for determination of representation by affidavit of membership," subject to the approval of the Director of the Office of Collective Bargaining. As this is the first occasion on which such a stipulation has been executed, it has been considered by the full Board of Certification.

Although Board conducted elections and the Comptroller's record of dues check-offs comprise the usual methods of ascertaining the representative status of an employee organization, they do not constitute the exclusive means of making such determinations. Neither the New York City Collective Bargaining Law nor the Consolidated Rules of the Office of Collective Bargaining limit the Board to any particular mode of ascertaining employee choice. Section 1173-5.0b(2) of the statute expressly authorizes the Board "to determine the majority representative. . . by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of . . . employees." (Emphasis supplied) Rule 2.9 incorporates this statutory provision and Rule 2.11 further

provides: "Subject to the approval of the Director, the parties to a representation proceeding may * * * agree in writing on the method by which the Board shall determine the question of representation."

The Board will not issue a certification solely on the basis of cards or petitions, signed by employees, designating a public employee organization as their collective bargaining representative. Mere designation, without more, does not have the probative value of a check-off authorization, which buttresses the act of designation with evidence of membership and dues payment.

The Association, apparently as a matter of policy, does not use dues check-offs. Here, however, the designations of the Association are supported by the individual affidavits of six of the eight employees, attesting that they are dues paying members of the Association. The quantum of proof submitted thus corresponds with that provided by a check-off of dues. Accordingly, we approve the agreement of the parties that the representative status of the Association may be so determined,¹ and find that the Association has been designated as their collective bargaining representative by a majority of the Nurse-Midwives.

II. The Appropriate Unit

The parties, in their agreement, also stipulated that a unit limited to Nurse-Midwives is appropriate for the purposes of collective bargaining.

The City's Nurse-Midwives provide antepartum, intrapartum, postpartum, and neonatal care in municipal hospitals. A significant segment of their work day is consumed in the performance of uncomplicated deliveries under the direct supervision of an obstetrician. In addition to a New York State Registered Professional Nurse License, Nurse-Midwives must possess a permit to practice midwifery issued by the City Commissioner of Health.

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See, to same effect, Matter of Village of Lindenhurst and Suffolk Chapter Civil Service Employees Association, Inc., N.Y.P.E.R.B. Decision, Case No. C-0185.

There is no history of collective bargaining for the title involved herein. Nor has nurse-midwifery been accorded a separate and distinct occupational status within the nursing profession in the City of New York. On the other hand, Nurse-Midwives are professional nurses who work in the Department of Hospitals. They share a host of career and job related interests with their nursing colleagues throughout the Department. Thus, all hospital nurses have a common range of wages, hours, working conditions and supervision. Many of them are assigned to special areas of health care. The Nurse-Midwife 's function is, of course, allocated to the obstetrical unit. But she is by no means the only hospital nurse whose skill is utilized in a particular division of a hospital. Staff Nurses regularly are assigned to such special areas as the operating and emergency rooms; the intensive and coronary care units; and to such diverse specialized clinical services as medicine, surgery, pediatrics, obstetrics, orthopedics, tuberculosis, chronic disease, psychiatry, and rehabilitation. Although the Nurse-wives' training may be somewhat longer than that of other hospital nurses, the latter must have experience or receive training in a number of the aforementioned special areas before they can function in a competent fashion. For example, staff nurses assigned to a coronary care unit are required to complete a course of instruction before they begin their tour of duty. Nurses in a hemodialysis unit, who must be conversant with the operation of artificial kidneys, also are given advance preparation. The same is true for nurses assigned to psychiatric clinics.

In conclusion, it is clear, and we find, that the skills and interests of Nurse-Midwives are sufficiently related to those of Staff Nurses to warrant their placement in the same bargaining unit.

The Association presently is the recognized, certified City-wide representative of Staff Nurses. Accordingly, we shall certify the Association as the collective bargaining representative of a unit including both Staff Nurses and Nurses-Midwives. Such certification,

however, is without prejudice to the pending petition, filed by Professional Public Health Nurses Association, for certification as the representative of the staff nurses employed in the Department of Health (Case No. R-87-67).

CERTIFICATION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

CERTIFIED, that New York State Nurses Association is the exclusive bargaining representative for the purposes of collective bargaining of all Staff Nurses and Nurse-Midwives employed by the City of New York.

DATED, New York, N.Y.

July 15, 1968.

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

SAUL WALLEN
M e m b e r