

**NYSNA, et. Al v. City, 4 OCB 6 (BOC 1969) [Decision No. 6-69 (Cert.)]**  
OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matters of

PROFESSIONAL PUBLIC HEALTH NURSE  
ASSOCIATION

-and-

NEW YORK STATE NURSES ASSOCIATION.

-and-

LOCAL 436, DISTRICT COUNCIL 37,  
AFSCME, AFL-CIO

-and-

THE CITY OF NEW YORK

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DECISION, ORDER, DIRECTION OF  
ELECTION AND CERTIFICATION

Hearings on the consolidated proceedings herein were held on June 20, 25, 26, July 18, 19, September 5, 6, 9, 24, 25, 26, and October 21, 1968. The record includes 1,896 pages of stenographic minutes and 130 exhibits.

Upon the entire record herein, and the briefs and memoranda filed by the parties, the Board renders the following decision:

I. Background and  
Pending Proceedings

New York State Nurses Association (hereinafter NYSNA) is the collective bargaining representative of Staff Nurses, Nurse-Midwives, Head Nurses, Supervisors of Nurses, Assistant Superintendents of Nurses, and Superintendents of Nurses.<sup>1</sup> It also is the "certified" representative, by recognition, of Senior Superintendents of Nurses and Supervising Superintendents of Nurses.<sup>2</sup>

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<sup>1</sup> MR-11-65: 2 NYCDL Nos. 24 and 25: 7 NYCDL Nos. 44 and 56: Decision No. 39-68.

<sup>2</sup> Section 1173-3.01 of the New York City Collective Bargaining Law (hereinafter NYCCBL) provides: "The term 'certified employee organization' shall mean any public employee organization \*\*\* (3) recognized by a municipal agency \*\*\* as such exclusive bargaining representative prior to the effective date of this chapter unless such recognition has been or is revoked \*\*\*"

Professional Public Health Nurse Association (hereinafter PPHNA) is the collective bargaining representative of Head Nurses (Public Health), formerly Public Health Nurses; Supervisors of Nurses (Public Health), formerly Supervising Public Health Nurses; Assistant Superintendents of Nurses (Public Health), formerly District Supervising Public Health Nurses; and Assistant Superintendents of Nurses (Public Health - Specialties), formerly Consultant Public Health Nurses (Specialties).<sup>3</sup>

The proceedings consolidated herein are:

Case No. R-64-67 -- Petition by PPHNA for certification as representative of Head Nurses (Public Health - Per Session), a title not presently represented.

Case No. R-87-67 Petition by PPHNA for certification as representative of the Staff Nurses in the Department of Health. These positions now are included in a City-wide unit of Staff Nurses represented by NYSNA.

Case No. RU-20-68 -- Petition by NYSNA for certification as representative of Assistant Directors of Public Health Nursing, a title presently unrepresented. The City opposes certification on the ground that these positions are managerial.

Case No. RU-29-68 -- Application by Local 436, District Council 37, AFSCME, APL-CIO, alleging that PPHNA has affiliated with District Council 37' Local 436, and requesting the transfer of all PPHNA certifications.

Case No. RE-1-68 -- Application by the City, under Rule 2.18: (a) to terminate all PPHNA certifications on the ground that

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<sup>3</sup> MR-12-65, 33 NYCDL Nos. 37 and 40. The titles were changed in 1966 (City Civil Service Commission Resolution 66-76).

all Public Health Nurse titles should be included in the corresponding units of Hospital Nurses<sup>4</sup> for which NYSNA is the certified representative, and (b) to eliminate from the certifications certain titles asserted to be managerial.

Case No. RE-2-68 -- Application by the City under Rule 2.18, to eliminate from certifications held by NYSNA certain allegedly managerial positions.

II. The City's Motion to  
Terminate PPHNA Certifications

The City has moved, under Rule 2.18, to terminate the certifications heretofore issued to PPHNA, on the ground that the Public Health Nurses covered thereby properly belong in the same bargaining units with the Hospital Nurses represented by NYSNA (Case No. RE-1-68).

In Matter of City of New York and Municipal Supervising Employees, Local 1181, Decision No. 74-68, we dismissed a similar motion by the City. We there said:

"The City's motion herein exceeds the permissible area. It is not limited to clarification or modification of the certification, but seeks to terminate it and substitute a now collective' bargaining representative. Its application thus is tantamount to a representation petition, which it may not file under the Rules. Nor are there here present any 'unusual or extraordinary circumstances' of the type contemplated when Rule 2.18 was adopted. Local 1181 has not abandoned or disclaimed its status as representative of the employees here concerned. To the contrary, it emphatically asserts its right to, continue to act as their collective bargaining representative."

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<sup>4</sup> The term "Hospital Nurses" is used herein solely to distinguish other registered nurses from those engaged in public health nursing.

Here, too, the City's motion exceeds the permissible area so far as it seeks to terminate existing certifications of a public employee organization and substitute a new collective bargaining representative. Accordingly, we shall dismiss so much of the City's application as seeks to terminate the certifications of PPHNA.<sup>5</sup>

### III. Transfer of PPHNA Certifications

Case No. RU-29-68 is an application to transfer to Local 436, District Council 37, the certifications issued to PPHNA. Notice of the application was given to the New York City Office of Labor Relations (OLR), posted in the Department of Health, and published in the City Record.

Our investigation establishes that the membership of PPHNA, at a duly called meeting at which a quorum was present, voted to affiliate with District Council 37, and has been chartered as Local 436 thereof.

An objection to the transfer was filed by the New York City Office of Labor Relations (OLR), and is based solely on the pendency of the City's application to terminate the PPHNA certifications. As we have dismissed that application, and find that Public Health Nurses properly constitute separate bargaining units (Section IV A, infra), we approve the transfer of the PPHNA certifications to Local 436, subject to our findings on the managerial issue". discussed in Section V, infra. We also shall substitute Local 436 as the petitioner in Cases Nos. R-64-67 and R-87-67.

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<sup>5</sup> That part of the City's motion which seeks to eliminate managerial titles is procedurally proper, and is discussed in Section VI, infra.

IV. The Appropriate Bargaining Units  
and Representative Status

A. General

Public Health Nurses have been represented by PPHNA as separate bargaining units since 1961. The question whether they should be placed in the same units with Hospital Nurses, which the City unsuccessfully sought to raise in Case No. RE-1-68, is presented by PPHNA's petitions relating to Head Nurses (Public Health - Per Session) and Staff Nurses in the Department of Health, and by NYSNA's petition relating to Assistant Directors of Public Health Nursing.

A substantial portion of the voluminous record including expert testimony and numerous exhibits, is devoted to explication of the similarities and differences between Public Health Nurses and Hospital Nurses.

Although a New York State Registered Professional Nurse's license is required of employees in each group, Public Health Nurses are listed by the City Civil Service Commission as a separate occupational group. Each group is part of the nursing profession and, as such, they share basic nursing skills and are concerned with sickness and health. Beyond that point, however, there are differences in the required qualifications, duties, and functions of the employees in the two groups.

The primary role of the Hospital Nurse is curative and patient-centered. The function of the Public Health Nurse emphasizes prevention of, sickness, and is community-oriented. Her services are not rendered in hospitals but in homes, schools, clinics, and the community. Her primary concerns are immunization programs, health education, epidemiologic investigations of communicable diseases, sanitation, and community organization in health matters. Her duties include, for example, contacting and instructing

a tuberculosis patient's family and others with whom the patient had contact, arranging for them to be examined at a health center, and tracing down the source case. Because the Public Health Nurse works "in the field," her services require greater exercise of initiative and independent judgment.

This differentiation is reflected in the job specifications. A non-supervisory Registered Nurse for hospital duties requires only the New York State License. A Head Nurse (Public Health), a comparable non-supervisory title, requires, in addition, completion of at least one scholastic year of instruction in Public Health-Nursing or a satisfactory equivalent. The first supervisory title in the Public Health Nurse series, Supervisor of Nurses (Public Health), requires a bachelor's degree and two years of experience in Public Health Nursing. The first supervisory level in the Hospital Nurse series (Head Nurse), requires only six months' experience in Nursing. These differences in educational and experience requirements are continued in the required qualifications for the higher supervisory levels.

It has been urged that the distinction between Public Health Nurses and Hospital Nurses was abolished or minimized by the 1966 modifications of the Civil Service titles and salary grades of the Public Health Nurse. The evidence is clear, however, that these changes were not accompanied by any modification of the job specifications or the actual duties of the Public Health Nurses. Public Health Nurses are still listed as a separate occupational group by the City Civil Service Commission.

It also has been urged that recent changes in the Department of Hospitals have created functional identity

between Public Health and Hospital Nurses in the areas of ambulatory care (out-patient clinics) and home visits (rehabilitation services). Of the 3,500 Registered Nurses in City hospitals, only 148 are regularly assigned to out-patient clinics, and only 35 to home care services.<sup>6</sup> None are regularly assigned to the school health program or to the other types of services typical of public health services.<sup>7</sup>

Upon all the evidence, we are convinced that Public Health Nurses should remain in separate bargaining unit. The pronounced differences in educational and experience qualifications and in the nature of their work, together with the absence of interchange, the existence, for many years, of NYSNA and PPHNA as separate professional associations, and the seven-year history of collective bargaining as separate units,<sup>8</sup> clearly indicate that the interests and skills of Public Health Nurses differ substantially from those of Hospital Nurses.

B. Head Nurses (Public Health - Per Session)

PPHNA, which is the certified representative of Head Nurses (Public Health), has petitioned for certification as the representative of Head Nurses (Public Health - Per Session). Both titles are employed only in the Department of Health, and their job specifications, required qualifications, and duties are substantially identical. The only differences are that the Per Session employees work part-time and are in the non-competitive class.

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<sup>6</sup> In 1967, Public Health Nurses made 113,790 home visits.

<sup>7</sup> Cf. Staff Nurses in the Department of Health, discussed in subsection C.

<sup>8</sup> The history of collective bargaining is one of the factors in unit determination expressly mentioned in Rule 2.10.

We find and conclude that, employees in these two titles have common qualifications, skills, and interests, and constitute a unit appropriate for the purposes of collective bargaining.

As a majority of the employees in that unit have authorized dues checkoff in favor of Local 436, District Council 37 (PPHNA), we shall certify that union as their collective bargaining representative.

C. Staff Nurses in the Department of Health

In December, 1961, PPHNA was certified by the New York City Department of Labor as the representative of Staff Nurses and Public Health Nurses, (now Head Nurses (Public Health), employed in the Department of Health [3 NYCDL No'. 40]).

On October 10, 1965, the Department of Labor notified the Director of Personnel and the Budget Director (then the City's bargaining representatives) that NYSNA was the certified representative of Staff Nurses in the Department of Hospitals (2 NYCDL No. 24) and the Department of Correction (7 NYCDL No. 56) which employ a majority of the Staff Nurses employed by the City, and that City-wide bargaining with NYSNA on behalf of all Staff Nurses, therefore, was appropriate (MR-11-65).<sup>9</sup> The City thereafter negotiated a contract with NYSNA as the City-wide representative of Staff Nurses.

On October 18, 1967, PPHNA filed with the Department of Labor its petition herein seeking certification as the representative of Staff Nurses in the Department of Health (Case No. R-87-67). That proceeding subsequently was transferred to this Board, pursuant to Rule 13.13.

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<sup>9</sup> See Procedures for Joint Collective Bargaining under Executive Order No. 49, New York City Employee Relations Program (1965), pp. 30-32. See also Executive order No. 40 (April 18, 1967) entitled "Exclusive Representation and Recognition under City Employee Relations Program."



Section 1173-3.01 of the NYCCBL provides that the term "certified employee organization shall mean any public employee organization \* \* \* recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter \* \* \*." NYSNA thus is the "certified" representative of Staff Nurses within the meaning of that section.

Section 1173-10.0c provides that certifications issued by the Department of Labor shall remain in effect until terminated by this Board.

The question presented, then, is whether Staff Nurses in the Department of Health should be severed from the unit presently represented by NYSNA. The evidence on that issue constitutes a considerable portion of the record herein.<sup>10</sup>

The job specifications for the title "Staff Nurse" state the duties and responsibilities of the title to be:

"Under supervision, performs professional nursing duties within an assigned unit in a hospital, clinic, institution or other public place administering to the sick; performs related work."

Examples of typical tasks, set forth in the specifications, describe the types of services ordinarily rendered in hospitals, etc., such as "Provides nursing care according to physician's orders"; "Administers medications and treatments as prescribed by physicians"; or "Observes and reports symptoms, reactions and conditions of patients."

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<sup>10</sup> Under the Procedures then in effect, there was no hearing on this unit issue at the time NYSNA was recognized as the City-wide representative of Staff Nurses. See note 8, supra.

Maintains records reflecting patient's condition, medication and treatments."

The evidence establishes, however, that the services rendered by Staff Nurses in the Department of Health are related to the preventive and community-oriented public health services rather than to curative patient-centered services.

Staff Nurses in the Department of Health are assigned to schools and clinics, and visit homes. In the schools, they examine children for communicable diseases, review the children's health records, prepare for doctors' immunization and examination sessions, and confer with teachers and guidance counselors. Visits to homes are made to ascertain if persons who have had contacts with TB patients have been examined, and whether the home setting is proper for the patient. An important part of their work is "case finds": the discovery of unrelated cases while working on an assignment.

Staff Nurses in the Department of Health wear the distinctive uniform of the Public Health Service Nurse, work with, and are supervised by, public health service supervisory nurses and officials.

Another consideration is pertinent to this issue.

The Department of Personnel has assigned Staff Nurses in the Department of Health a Title Code Number (No. 51010) different from that assigned to other Staff Nurses (No. 50910). The number assigned to those in the Department of Health is in the Public Health Nurse series of numbers. As title code numbers are assigned according to a carefully planned system based on related duties, as well as occupational groupings, the separate

number assigned to Staff Nurses in the Department of Health constitutes recognition of the different duties performed by them, and their relationship to the public health service.

On the record herein, we find that although the title, job specifications, and salary range of all Staff Nurses are the same the duties and interests of Staff Nurses in the Department of Health are primarily in the field of Public Health. Accordingly, we shall direct an election among these Staff Nurses.

As Local 436, District Council 37 (PPHNA), has established a substantial showing of interest among these employees, and as these employees have been represented by NYSNA, both Local 436, District Council 37 and NYSNA will be named on the ballot. If a majority of the Staff Nurses in the Department of Health vote for representation by Local 436, we shall add them. to the unit of Head Nurses (Public Health) and Head Nurses (Public Health - Per Session). If the majority vote in favor of representation by NYSNA, they will remain in the unit of Staff Nurses presently represented by NYSNA. If either Local 436 or NYSNA does not desire to participate in the election, it may have its name removed from the ballot upon written request filed with the Board within ten days after service of this Decision.

#### V. Managerial Status

In Cases Nos. RE-1-68 and RE-2-68, the City asserts that various titles presently represented by NYSNA or PPHNA are managerial in nature and should be excluded from any bargaining unit. It opposes, on the same ground, NYSNA's petition in Case No. RU-20-68 for certification as the representative of Assistant Directors of Public Health Nursing.

Hospital titles

At the hearing, the City and NYSNA executed the following stipulation concerning the Superintendents of Nurses, Senior Superintendents of Nurses, Supervising Superintendents of Nurses, and Assistant Superintendents of Nurses except those solely engaged in instructional duties in a school of nursing in the Department of Hospitals:

1. Each of these titles actually possesses and, as a matter of independent judgment and discretion, exercises and, until the applicable job specifications are appropriately amended, will continue to possess and so exercise the responsibilities contained in the relevant job specification.

2. Thus, each of the employees in these titles actually possesses, as a matter of independent judgment and discretion, exercises, and until the applicable job specifications are appropriately amended, will continue to possess and exercise these managerial responsibilities:

a) Establish and/or assist in establishing the philosophy, aims, standards, policies, and their implementation for the Nursing Service or Nursing Education.

b) Plan, direct, organize, staff, control and coordinate the nursing service in a hospital or significant clinical service in the hospital.

c) Plan, organize and administer an orientation and in-service staff development program.

Although some of the, responsibilities referred to in the stipulation apparently are being assigned under a current reorganization of hospital personnel, the testimony

and departmental job descriptions, generally are consistent with and support the stipulation. We find, therefore, in accordance with the stipulation, that the titles referred to therein are managerial-executive.

#### Public Health Titles

The Department of Health is organized into 21 Bureaus and provides health services in 22 District Health Centers, 5 Health Centers, and a number of specialized clinics, centers, stations, and field bureaus located throughout the City.

#### Assistant Directors of Public Health Nursing

There are six Assistant Directors of Public Health Nursing, one assigned to each of the five borough headquarters, and one to Central Headquarters. The job specifications for the title state:

"Under general direction, assists in the general administration of the Bureau of Public Health Nursing; coordinates activities of public and private agencies in the field of public health; performs related work."

Examples of typical tasks are:

"Assists the Director of Public Health Nursing in developing programs and in formulating and interpreting policies and procedures.

"Supervises operation of district offices and direct,; administrative studies of techniques and procedures.

"Evaluates and recommends changes in Nursing,,Service and training programs as they relate to special fields.

"Maintains personnel records, and collects and reviews with a bureau personnel board, civil service ratings and other personnel evaluations."

The Assistant Directors of Public Health Nursing direct the public health nursing activities in the 22 District Health Centers and all satellite projects. They evaluate nursing programs within their boroughs and recommend changes in policy and training Programs, and evaluate nursing services and needs. The Assistant Superintendents of Nurses (Public Health - Specialties) and the Department's educational staff report to the Assistant Director at the Central Headquarters.

There has been no history of collective bargaining for the title, and it is on the City's list of positions eligible for participation in the City-administered Management-Welfare Fund.

The Assistant Directors of Public Health Nursing clearly participate in "the formulation of objectives or the method of fulfilling established purposes" indicative of the managerial role.<sup>11</sup> They are next in line to the official exercising primary city-wide control and direction of public health nursing. Five of them administer borough-wide activities which include numerous sub-divisions, and the sixth, located at Central Headquarters, apparently directs city-wide consultative and educational personnel. They, participate in the formulation of policy and development of programs, direct administrative studies of techniques and procedures, and review civil service ratings and other personnel practices.

We find, therefore, that they are managerial-executives and, accordingly, shall dismiss the petition filed by NYSNA to represent them for purposes of collective bargaining (Matter of City Employees Union, Local 237, I.B.T., Decision No. 79-68.

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<sup>11</sup> Matter of Local 154, D.C. 37, Decision No. 73-68

Assistant Superintendents  
of Nurses -(Public Health) <sup>12</sup>

Twenty-two of the employees in the above title are assigned to District Health Centers; another is assigned to Central Headquarters. The job specification states that an employee in this title "under direction, administers a public health nursing program in an assigned district."

These Assistant Superintendents are under the administrative direction of the District Health Officer and are subordinate also to an Assistant Director of Public Health Nursing. Their principal function is to see that established programs are properly carried out. District-wide decisions are made by the Assistant Director or the District Health officer. The Assistant Superintendents do not formulate policies or programs, nor do they play any role in the hiring, termination, disciplining, transfer or promotion of other employees. Although they handle first-step grievances, this alone is of no significance, since the first step customarily is handled by supervisors who are entitled to bargaining rights. (Matter of Terminal Employees Local-832, I.B.T., Decision No. 75-68).

The title is the second level of supervision in the occupational group, and corresponds in supervisory functions, to Supervisor of Nurses, the second supervisory level in the Hospital Nurse Occupational Series, a title\_which is not asserted to be managerial.

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<sup>12</sup> The former title for this position was "District Supervising Public Health Nurse."

Employees in the title receive overtime credits, are not on the City's list of positions eligible for the City-administered Management Welfare Fund, and have bargained collectively for over seven years.

Doctor Toff, Assistant Commissioner of Health in charge of community and professional health services, testified that the Department has no position on the status of this title, and that he, personally, was "not quite sure" whether it is managerial.

Upon all the evidence, we find that Assistant Superintendents of Nurses (Public Health) are not managerial-executives, and shall deny the City's motion to delete the title from the existing certification.

Assistant Superintendents of Nurses 13  
(Public Health - Specialities)

Employees in these titles are full-time consultant Public Health Nurses who have had special training and education in a specialty. Their grade and salaries correspond with those of Assistant Superintendents of Nurses (Public Health) discussed above. They have bargained collectively for seven years and are not included on the City's list of titles eligible for the City-administered management-Welfare Fund.

These Assistant Superintendents do not hire, fire, discipline, transfer or promote other employees, and there is little or no evidence that they play any significant or effective role in the formulation of Policy. Indeed, Dr. Toff testified that it is not the Department's position that these titles are managerial.

Accordingly, we shall also deny this portion the City's motion.

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<sup>13</sup> The former title was "Consultant Public Health Nurse (Speciality)."



ORDER, CERTIFICATION, AND  
DIRECTION OF ELECTION

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

O R D E R E D , that the City's motion in Case No. RE-1-68 be, and the same hereby is, denied, and it is further

O R D E R E D , that the City's motion in Case No. RE-2-68 be, and the same hereby is, granted except as to those Assistant Superintendents of Nurses whose sole responsibility is the performance of instructional duties in a school of nursing in the Department of Hospitals; and it is further

O R D E R E D , that Certifications 2 NYCDL No. 25 and MR-11-65. held by New York State Nurses Association be, and the same hereby are, amended by striking therefrom the titles of Assistant Superintendent of Nurses, Assistant Superintendent of Nurses (Nursing Education), Superintendent of Nurses except as to those Assistant Superintendents of Nurses whose sole responsibility is the performance of instructional duties in a school of nursing in the Department of Hospitals; and it is further

O R D E R E D , that the statutory status of New York State Nurses Association as certified representative, by recognition, of Senior Superintendents of 'Nurses and Supervising Superintendents of Nurses be, and the same hereby is, revoked, and terminated; and it is further

O R D E R E D , that Certifications 3 NYCDL Nos. 37 and 40 and MR-12-65 be and the same hereby are, amended by substituting "Local 436, District Council 37, AFSCME, AFL-CIO" for "Professional Public Health Nurse Association"; and it is further

O R D E R E D , that the petition filed by New York State Nurses Association in Case No. RU-20-68 be, and the same hereby is, dismissed; and it is further

C E R T I F I E D , that Local 436, District Council 37, AFSCME, AFL-CIO, is the exclusive representative for the purposes of collective bargaining of all Head Nurses (Public Health) and Head Nurses (Public Health- Per Session) employed by the City of New York; and it is further

D I R E C T E D , that as part of the investigation authorized by the Board, an election by secret ballot shall be conducted under the supervision of the Board, or its agents, at a time, place, and during hours to be fixed by the Board, among the full-time Staff Nurses employed by the City of New York in the Department of Health during the payroll period immediately preceding this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of the election), to determine whether they desire to be represented for the purposes of collective bargaining, by Local 436, District Council 37, AFSCME, AFL-CIO, by New York State Nurses Association, or by neither; and, it is, further

D I R E C T E D, that either of said employee organizations may have its name removed from the ballot in the aforementioned election by filing with the Board, within ten (10) days after service of this Direction of Election, a written request that its name be removed from said ballot.

DATED NEW YORK, N.Y.

February 6 , 1969.

ARVID ANDERSON  
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