

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK STATE NURSES ASSOCIATION,
Petitioner.

--and--

DECISION NO. 2-94

FEDERATION OF NURSES, NEW YORK STATE
UNITED TEACHERS, A.F.T., A.F.L.-C.I.O.
Intervenor,

--and--

DOCKET Nos.
RU-1109-92
RU-1123-92

DISTRICT COUNCIL 37, A.F.S.C.M.E,
A.F.L.-C.I.O.,
Intervenor,

--and--

THE CITY OF NEW YORK,
Respondent.

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FEDERATION OF NURSES, NEW YORK STATE
UNITED TEACHERS, A.F.T., A.F.L.-C.I.O
Petitioner,

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NEW YORK STATE NURSES ASSOCIATION,
Intervenor,

--and--

DOCKET Nos.
RU-1122-92

DISTRICT COUNCIL 37, A.F.S.C.M.E,
A.F.L.-C.I.O.,
Intervenor,

--and--

THE CITY OF NEW YORK,
Respondent.

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DECISION AND ORDER

On May 22, 1992, the New York State Nurses Association ("NYSNA") filed a petition under Title 61 ("Office of Collective Bargaining ['OCB']"), § 1-02(s), of the Rules of the City of New York¹ ("OCB Rules") to add the title of Case Management Nurse (Police Department) ("CMN-PD"), Levels I and II,² to Certification No. 30-82, as amended, covering the titles of Staff Nurse, Nurse-Midwife, Nurse Practitioner, Assistant Head Nurse, Head Nurse, Supervisor of Nurses, Nurse Practitioner (Sanitation), Staff Nurse (Department for the Aging), Associate Nurse Midwife, and Associate Nurse Practitioner. On May 26, Counsel for NYSNA was advised by the Director of Representation of the OCB that an amended petition, pursuant to § 1-02(h) of the

¹ Section 1-02(s) of the OCB Rules provides, in pertinent part, as follows:

Amendment of certifications (title changes)--motion; affidavit; notice of filing; answering affidavit; disposition by the board. (1) The certified representative of a unit including classes of positions (titles) the names of which are changed or to which specialty designations are added may make a motion requesting amendment of its certification

² Title Code No. 50958.

OCB Rules,³ would be entertained. On June 1, 1992, NYSNA filed an amended petition docketed as RU-1109-92.

On August 13, 1992, the City of New York ("City"), by its Office of Labor Relations, advised the Director of Representation of the OCB that it did not oppose the NYSNA petition to add the CMN-PD title to Certification No. 30-82, as amended.

On September 14, 1992, a petition docketed as RU-1122-92 was filed by the Federation of Nurses/United Federation of Teachers ("FN/UFT") seeking certification as sole collective bargaining representative of Case Management Nurses (Fire Department) ("CMN-FD").⁴ On September 21, 1992, NYSNA filed an application to intervene in RU-1122-92.

On November 12, 1992, NYSNA filed the petition docketed as RU-1123-92, seeking to add to Certification No. 30-82, as

³ Section 1-02(h) of the OCB Rules provides, in pertinent part, as follows:

Petitions--notice of filing. Upon the filing of a petition pursuant to the provisions of §1-02 of these rules, notice thereof shall be posted on the public docket maintained by the board and shall be published in the city record. The notice shall include the date the petition was filed, the name and address of the petitioner, the name and address of the public employer, and a statement of the action sought. A notice containing the same information will be prepared by the board and delivered to the employer, which shall post it on the bulletin board customarily used for the posting of notices for employees for a minimum of ten (10) days.

⁴ Title Code No. 90959.

amended, the titles of Case Management Nurse (Department of Sanitation) ("CMN-DOS"),⁵ Senior Case Management Nurse (Department of Sanitation) ("Sr.CMN-DOS"),⁶ and Case Management Nurse (Department of Correction) ("CMN-DOC").⁷ On December 4, 1992, FN/UFT filed an application to intervene in RU-1123-92.

Pursuant to the OCB Rules,⁸ the FN/UFT submitted authorization cards with its application to intervene in RU-1109-92 and with its petition docketed as RU-1122-92, as proof of

⁵ Temporary Title Code No. 09968.

⁶ Temporary Title Code No. 05207.

⁷ Temporary Title Code No. 06240.

⁸Section 1-02 of the OCB Rules provides, in pertinent part, as follows:

Representation Proceedings.

(c) Petition by public employees or their representatives contents; proof of interest.

(2) Simultaneously with the filing of the petition petitioner shall:

(i) In the case of a petition for certification, submit to the board evidence that at least thirty (30) percent of the employees in the appropriate unit, or in each appropriate unit, desire petitioner to represent them for the purposes of collective bargaining . . .

interest of the employees in the CMN-FD⁹ and CMN-PD¹⁰ titles for certification of the FN/UFT as their exclusive collective bargaining representative. No authorization cards were filed with the petition or application to intervene in RU-1123-92.

On January 11, 1993, the City advised the Director of Representation of the OCB that it did not oppose union representation of the titles at issue, but that in light of the interventions by the FN/UFT and NYSNA, the City opposed the motions filed by the FN/UFT in all three of petitions because of the public policy against proliferation of bargaining units.

On March 11, 1993, the OCB's Director of Representation advised the FN/UFT and NYSNA that the title of Case Management Nurse (Department of Personnel) ("CMN-DOP")¹¹ was created pursuant to DOP memorandum.¹² On March 22, 1993, NYSNA filed a third petition, docketed as RU-1135-93, seeking to add the title of CMN-DOP to Certification No. 30-82, as amended.

⁹ Authorization cards were submitted for all of employees in the CMN-FD title listed on the City payroll as of July 21, 1992, with the exception of one (Lashkow; Soc. Sec. No. 064-50-3148); however, an authorization card was submitted for an employee not listed on the payroll as of that date (Debra Morri; Soc. Sec. No. 067-62-7630).

¹⁰ Authorization cards were submitted for all of employees in the CMN-PD title listed on the City payroll as of November 20, 1992. No cards were submitted for employees not named on the payroll.

¹¹ Temporary Title Code No. 06626.

¹² Routing No. 93/2.

A prehearing conference was held on March 26, 1993, attended by the FN/UFT, NYSNA and the City. On that date also, the FN/UFT filed an application to intervene in RU-1135-93. On notice to the parties, the petitions were consolidated. On April 28, 1993, District Council 37, AFSCME ("D.C. 37") filed an application to intervene in all four proceedings, seeking to accrete the titles to Certification No. 28-78, as amended, covering various health care titles.¹³ On April 29, 1993, all applications to intervene were granted.

On May 26, 1993, the City advised the OCB's Director of Representation that the CMN-DOP title was vacant. The Trial Examiner advised the parties of the vacancy. By letters filed July 22, 26 and 28, respectively, the FN/UFT, NYSNA, and D.C. 37 requested withdrawal of their petitions with respect to RU-1135-93, which withdrawal was granted. A hearing was held on May 27, July 12 and July 23, 1993, to hear testimony and to receive evidence on the question of unit determination. Upon receipt of the briefs, the record was closed.

¹³ Junior Public Health Nurse, Public Health Nurse, Supervising Public Health Nurse, and District Supervising Public Health Nurse, in addition to titles including Anesthetist, Associate Staff Anesthetist, Medicolegal Investigator, Pediatric Nurse Associate, Physician's Assistant, Physician Assistant, Physician Assistant II, and Senior Anesthetist.

Background

The titles of Case Management Nurse (Police Department) ("CMN-PD"),¹⁴ Case Management Nurse (Fire Department) ("CMN-FD"),¹⁵ Case Management Nurse (Department of Correction) ("CMN-DOC"),¹⁶ Case Management Nurse (Department of Sanitation) ("CMN-DOS"),¹⁷ and Senior case Management Nurse (Department of Sanitation) ("Sr. CMN-DOS")¹⁸ are classified as non-competitive, subject to Rule XI. There are no lines of promotion from them. The CMN title in each department consists of Levels I and II, except in Sanitation, where comparable functions performed by the Level II nurse are performed by the Senior Case management Nurse. Pursuant to the Mayor's Personnel Order 92/3, effective July 1, 1991, the salary for the CMN--Assignment Level I ranges from \$35,334 to \$42,927; for Assignment Level II, including the Sr. CMN-DOS, from \$37,776 to \$46,366. At the time the instant petitions were filed, there were twenty-nine employees in the CMN

¹⁴ Title Code No. 50958, Department of Personnel ("DOP") Resolution No. 80-28, dated April 22, 1980.

¹⁵ Title Code No. 50959, DOP Resolution No. 77-37 dated March 30, 1977.

¹⁶ Temporary Title Code No. 06240, Department of Personnel ("DOP") memorandum, Routing No. 474, dated February 19, 1987.

¹⁷ Temporary Title Code No. 09968, DOP memorandum, Routing No. 388, dated April 25, 1979.

¹⁸ Temporary Title Code No. 05207, created by DOP memorandum, Routing No. 407, dated February 5, 1981.

titles.¹⁹

We take administrative notice of job descriptions promulgated by the Department of Personnel for the petitioned-for titles rather than rely on some of the job descriptions offered into evidence which had been superseded or which were issued on non-DOP, departmental letterhead. The job descriptions provide that the qualifying requirements for all CMNs are essentially the same: all require a candidate to be licensed and registered to practice as a professional nurse in New York State. In addition, all must have either a baccalaureate degree in nursing plus three years of clinical nursing experience or a satisfactory equivalent. The position of Senior Case Management Nurse also requires a license and current registration to practice as a professional nurse in New York State, but four years of experience as a Staff Nurse and/or Case Management Nurse may be substituted for a baccalaureate degree in nursing and three years of clinical experience. A satisfactory equivalent may be substituted for the qualification requirements for Senior Case Management Nurse.

The job descriptions also indicate that the types of duties and responsibilities of Case Management Nurses in the

¹⁹ Included in this total is Debra Morri, the CMN-FD who signed an authorization card submitted with the petition of the FN/UFT. As noted suRra at Note 9, her name does not appear on the Payroll Management System roster for the month ending July 21, 1992.

Police, Fire, Sanitation and Correction Departments are virtually identical. According to the job descriptions, each CMN, under supervision, implements a case-management system and collaborates with a physician in the assessment of the health and medical status of the patient-member of the given department. This includes planning and implementing a medical regimen within established protocols, following and managing the case and therapy of each patient requiring long-term care, and performing related work.

A CMN in Assignment Level I consults with the patient's private physician and conducts detailed interviews with the patient in order to evaluate treatment plans. The CMN follows up with hospitals where the patient-member has been admitted in order to return the patient to duty as soon as medically indicated. The CMN also screens and treats the more simple cases using criteria established by a medical officer. The CMN participates in critiquing cases with other members of the medical staff and institutes and maintains record-keeping systems in order to permit standardized evaluation and treatment plan for medical incidents. In addition, the CMN provides health care information to members of the respective departments and their families.

In addition to performing the above functions, a CMN in Assignment Level II supervises the case-management system as well

as the screening and treatment of patient members of the various departments. The CMN-Level II also advises CMNs concerning treatment plans, establishes and maintains work schedules, and supervises work activities of nursing and other subordinate staff, planning additional education and training for nurses, as well. In Sanitation, the Senior Case Management Nurse performs the functions of a CMN-Level II, but, in addition, the Senior Case Management Nurse there initiates disciplinary procedures related to sick-leave use and testifies at Department trials.

The Evidence

FN/UFT Evidence

[Fire Department]

Kathryn Borthwick was the first witness to testify for the FN/UFT. She is employed by the Fire Department, Bureau of Health Services, in its health services clinic, located at 251 Lafayette Street in Manhattan. Her Civil Service title is Case Management Nurse. She has held the position for nine years. She has an associate's degree in mental health and is a Registered Nurse.

Ms. Borthwick testified that each CMN-FD is assigned clinical cases to follow through the course of the presenting illnesses or conditions. "[T]hey draw blood, put on Holter [cardiac] monitors, remove sutures, do dressing changes, [for]

which a lot of them are burns, splinting[, t]hings of that nature," she stated, adding that each CMN-FD also "assist[s] the doctor, whatever it may be, like the dressing changes, following cases, checking the charts to see if this is a service injury or non-service."

According to Ms. Borthwick, she and her colleagues respond to telephone inquiries, schedule appointments, and arrange for transportation of the patient, in addition to requisitioning records and arranging for diagnostic procedures to be performed in hospital settings. They also obtain authorizations in connection with service-related injuries and advise of resources for help with non-service-connected problems.

The witness testified that the job of the CMN-FD typically requires communication with firefighters in the field who may have been exposed to communicable diseases, e.g., tuberculosis, Hepatitis B and AIDS. Ms. Borthwick testified, "Everything is documented in the field. The nurse then reviews the field sheets in the morning. But usually by that time, [the members of the Department] are calling in on the phone." Ms. Borthwick explained further, "[The patients] are brought into the clinic[.] They have to be evaluated"

The witness explained that each CMN-FD is assigned to carry out a special project in addition to the regular work that

each performs in the clinic. The assignments which are specific to individual CMNs are nonetheless interchangeable among them, and they are called upon to perform each other's designated assignment when short-staffed.

Ms. Borthwick's own special assignment is to review the case files of the Department members who have been on medical leave for more than 30 days. The cases are reviewed by Dr. Jones, Chief Cheeseman and usually a commissioner of the Department. Along with CMN supervisor Lashkow, Ms. Borthwick answers their questions as to the patient's medical history, the reason for the prolonged medical leave, etc. She also implements the recommendations made at that review, as she described it, "whether that means making appointments for these gentlemen to come in or go out to be seen by another doctor on the outside or whatever."

Ms. Borthwick testified that CMN-FD Debra Morri is the nurse in charge of tracking members of the Department who have been exposed to communicable diseases. Ms. Borthwick stated that Ms. Morri "pulls the field sheets, gets the folders, brings them in to the doctor, talks to the officers in the field." When diagnostic tests are required ("Let's say a Mantoux TB test," she noted, adding,, "Sometimes they have to get shots for hepatitis.") the patient is followed for months. "It's up to Debbie to keep

following these men," Ms. Borthwick stated. "They come in for their baseline inoculation and then they come back at . . . whatever amount of time the doctor says they have to come back . . .for X-rays. It is pretty sensitive being followed for that. Sometimes they have to get shots for hepatitis . . . We had a program [of Licensed Practical Nurses] to inoculate them for Hepatitis B. They stopped doing that . . . They are getting rid of them and they want us to do this work also."

Ms. Borthwick testified that CMN-FD Annie Bachmann is the CMN in charge of the Fire Department's burn center:

[Ms. Bachmann] will always confer with Dr. Madden at [New York Hospital-] Cornell (Medical Center).²⁰ She talks to him on the phone. She might say, 'I think this man should have more medical leave even though we are releasing him from the burn center.' . . . She also talks to . . . the company that supplies the dressings for the burns. There is Dr. Jaffe[.] He is a neurologist[.] Dr. Kramer . . . is an audiologist. These are doctors that we usually talk to on the phone and they help us out with whatever we are requesting.

CMN Mary Kriener's special assignment is to assist in examinations of firefighters who wear self-contained underwater breathing apparatus. Ms. Borthwick testified that CMN Kriener regularly monitors these firefighters for parasitic infection and lung problems.

²⁰ New York Hospital-Cornell Medical Center.

As to the role of CMN Lashkow, CMN Borthwick testified further that, in addition to reviewing X-rays taken on the premises, Ms. Lashkow reviews reports of X-rays sent out to radiology specialists.

Justine [Lashkow] reads all the reports that come back. It's once a week. It is over 100 X-ray reports. Anything she thinks might be suspicious, because they don't flag it for us if they feel there might be a problem. They just type it up for us. We found men that had masses on the X-rays. She reviews all of these X-ray reports, pulls the charts and gives it to the doctor

Silvia Morris, a CMN-FD for fifteen years, also testified that, in addition to Ms. Lashkow, all CMN-FDs review X-ray reports. She stated, "All the X-ray reports that come back from radiology, [the CMN] has to review them. Any of the abnormalities, she has to take them out and show them to the doctor." The same is true, she testified, with blood pressure and hearing problems -- "You have got to kind of cue [the doctor," she stated -- as well as cancer -- "We . . . watch for certain things. [W]e have some cancer patients that will come in. Each of us has our little caseload that we follow. When the guy comes in, you go into the room with the doctor and you watch. And you advise." Finally, she testified that, in addition to following cases and responding to telephone calls to the clinic, "You also do the treatment, the dressings,, also removal of the sutures and stuff like that."

Ms. Morris' special assignment includes gathering medical information required to process retirement papers I for Department members. She determines the physician specialist which a given member must see. She also obtains releases for disability applicants, interviews the applicants, makes appointments for their medical examinations, reads medical test reports for noteworthy information, reports the results to the attending physician, supplies the information to the various medical committees and boards which render decisions about applications, and tracks the patient throughout the follow-up period prescribed by the medical boards. With non-service-related injuries, Ms. Morris testified, she reviews medical records to ascertain whether a patient has had the appropriate tests which the Department requires.

The follow-up, she said, is often difficult. "You have to make sure they come in," she testified, "[b]ecause if anything happens, it is my responsibility." She gave an example:

A lot of the time you can look at the lab work and see a blood sugar [value] of 300 or 350 [milligrams per deciliter] [and] you know the guy is going to get off the line. You know the doctor is there[;] you take the folder in to the doctor. And they will tell the gentleman officer to pull the off the line. . . . However, if the [i]f he is working that day. However, if the . . . doctor is not there and he is in the field, we show the officer and tell him . . . we have to pull this gentleman off the line and then we call the doctor in the meantime."

According to Ms. Borthwick, CMN-FDs come in contact with Licensed Practical Nurses ("LPNs"), although the CMNs are gradually taking over the work previously performed by the LPNs. She stated that they come in contact with no other Registered Nurses or with health professionals in hospitals or other city agencies.

As to other terms and conditions of employment, Ms. Borthwick testified that the CMN-FDs are scheduled to work an eight-hour day in a five-day week, but may be called upon to work longer hours. They generally receive no overtime pay for working longer than the required number of hours, but they were given a one-time bonus amounting to time-and-a-half pay for working extra hours during a "sick-out" by uniformed firefighters. Ms. Borthwick also testified that CMN-FDs are entitled to receive one hour of compensatory time per week after working through lunch for five days. She said they receive premium pay for working holidays ("I think time-and-a-half"). Annual leave time accrues at the rate of four weeks for up to eight years of service, five weeks after that. They also receive three days for educational pursuits. They are required to purchase and to wear uniforms, and, although not required, are advised to purchase their own malpractice insurance coverage.

On clinical matters, Ms. Borthwick and her CMN colleagues work under the immediate supervision of CMN Justine Lashkow. They answer to the Chief Medical Officer of the Bureau of Health Services, who currently is a surgeon. As Ms. Borthwick described his function, "He is in charge of the doctors and the nurses, and he takes care of the medical problems in the clinic." On administrative matters, the CMNs answer to the Chief in Charge of the Bureau of Health Services, who currently is not a trained medical professional. The Chief Medical Officer and Chief in Charge, in turn, report to the Deputy Commissioner of the Department.

[Police Department]

Nilsa C. McNamara is employed by the Police Department. Her Civil Service title is Case Management Nurse. She has been a CMN-PD for eight years. She has a baccalaureate degree and is a Registered Nurse. The base of operations for Ms. McNamara and the 21 other CMNs²¹ in the Police Department is One Lefrak City, Rego Park, Queens. All are assigned to the two clinics in Queens, one on Staten Island and one in the Bronx.

²¹ Seventeen CMN-PDs were on active service when this testimony was taken; three were on maternity leave, and one was on military extended leave. (Tr. 103)

CMN McNamara's duties include making a determination as to when a police officer on sick leave for psychologic: or substance abuse reasons, or when an officer on "chronic [sick] status," should come into the clinic to be examined by a departmental physician. "I will speak to him and determine basically what the problem is," she stated, "And then we will make a determination as to when he should come in to see our district surgeon"; "If he goes out with a medical problem, I will make the determination as to when he should come in." She also confers with other units by phone, such as the counseling unit and psychological services.

When an officer comes to the clinic, Ms. McNamara reviews his medical file and determines the precise nature of his illness. Consonent with this, if the injury occurred in the line of duty, she makes sure the appropriate forms are filled out as to the hospital where he was transported, the treatment that was initiated, and any treatment that may be required. Ms. McNamara evaluates the officer's condition and speaks with the officer, the attending physician, and hospital personnel. If the officer is brought into the clinic, she assists the physician in the examination, making sure that the examining room is properly equipped and so forth. CMNs in other Police Department clinics throughout the City also examine the patients, review their chart

and confer with the physicians. Ms. McNamara works in the confidential unit as well, which treats, advises and counsels officers who have a condition which they wish not to disclose to other departmental personnel.

CMNs in the ("hazmat") unit are concerned with officers who have been exposed to hazardous materials including toxic fumes, tuberculosis, etc. They communicate with police personnel in the field, prepare paperwork, direct the patient to come to the clinic or make a referral to a more convenient departmental medical office.

In the hypertension unit, CMNs monitor officers for blood pressure problems, draw blood for cholesterol screening, and perform electrocardiographic screening, all under the supervision of a cardiologist.

Ms. McNamara also works with disabled officers, obtaining authorization for them to consult physicians, to obtain equipment such as a wheelchair, etc. She coordinates information needed to process the request, obtains the necessary signatures, and provides the officer with documentation needed to obtain the needed goods and/or services. Ms. McNamara also sits in on interviews by the Department's Chief Surgeon of candidates for CMN positions. She screens the resumes to make sure they meet the required qualifications and explains the job to the candidates.

Ms. McNamara testified that, although the CMNs are given specific assignments within their respective clinics, all are nonetheless interchangeable. They occasionally are called upon to perform each other's designated assignment when short-staffed.

In the line of supervision, Ms. McNamara reports to Police Lieutenant John Halbig, a non-physician, and, ultimately, to Robert Thomas, M.D., the Chief Surgeon of the Department. The witness stated that she and the CMNs at One Lefrak come in contact with a police officer who functions as an X-ray technician.

As to the terms and conditions of employment, Ms. McNamara testified that she is paid to work a seven-hour day, with one unpaid hour for lunch. Although her nominal workday runs from eight to four, the hours can vary, depending upon the clinic's needs at any given time. Ms. McNamara testified that she and her fellow CMN-PDs are compensated for overtime at the rate of time-and-a-half after having worked 40 hours a week.

According to the witness, annual leave time accrues at the rate of four weeks for up to five years of service, five weeks after that. one sick day accrues for every month of service. CMN-PDs are entitled to thirteen paid holidays (Tr. 94) and to compensatory time at the rate of time-and-a-half for working on a paid holiday.

Unlike the CMNs in the Fire Department, the CMNs in the Police Department do not purchase uniforms, nor are they required to do so; rather, they wear lab coats furnished by the Department on a weekly basis. Like the Fire Department, the Department does not provide malpractice insurance for CMN-PDs; they purchase their own coverage.

[Department of Correction]

The FN/UFT had expected to present Pat Petnick, a Case Management Nurse in the Department of Correction, as a witness. However, counsel for the union stated for the record that Ms. Petnick could not be excused from duty without using annual or personal leave time. Following a request by the FN/UFT for intervention by the OCB, the Trial Examiner requested that the Director of Representation enquire as to possible intervention by the office of Labor Relations. OLR informed the Trial Examiner that the Department was permitted to set its own policy regarding release of an employee for purposes of giving testimony. The Department of Correction did not change its position; therefore, Ms. Petnick declined to testify. The FN/UFT did not attempt to secure the attendance of Ms. Petnick through the issuance of a subpoena.

NYSNA Evidence

[Department of Sanitation]

Karen Procopio is employed by the Department of Sanitation. Her Civil Service title is Case Management Nurse. She has been a CMN-DOS for three-and-a-half years. She is a Registered Nurse. The base of operations for Ms. Procopio and the four other women who hold the Civil Service title of Case Management Nurse is the Department's medical division clinic at 25 Hudson Street in Manhattan. All five are Registered Nurses. Two other RNs work at the clinic; they hold management positions, as medical director and as director of operations. Ms. Procopio stated that she knew of no other nurses employed by the Department at the clinic location.

Ms. Procopio testified that Marcia Hosten has the civil service title of Case Management Nurse but functions as a head nurse and is represented by the New York State Nurses Association. She added that Julia Cammerano also has the civil service title of Case Management Nurse but functions as a staff nurse and is represented also by NYSNA- According to the witness, the three other CMNs -- Joanne Negrón, Sarah Manning and Karen Procopio herself -- are not members of any bargaining unit. Ms. Procopio stated that Joanne Negrón and she function as staff nurses and that only Sarah Manning functions as a case Management

Nurse. Under questioning to clarify her status, Ms. Procopio stated, on information and belief, that she was recruited by the Department to fill the position of staff nurse.²²

Ms. Procopio testified that her duties in the clinic include physical examinations of job applicants and of sanitation men who wish to resume active duty following illness and injury. The witness testified that physical assessment is also the work of Nurses Cammerano and Negrón. In addition, she stated that Ms. Hosten, the head nurse, also substitutes for them as often as

²² Cross-examination by Paul Janis, representing the FN/UFT:

- Q: Do you know how it is that you have a title of case management nurse but work as a staff nurse?
- A: I believe they were recruiting for staff nurses but they gave us a case management title.
- Q: When you say "they," who is they?
- A: Maybe the Department of Sanitation. I come out of the Mayor's Office, though the title, the case management nurse, I'm not even too sure about that.
- Q: How did you get the title of case management nurse, you took a test?
- A: No, I didn't take a test.
- Q: You applied for a job with the sanitation department?
- A: Yes.
- Q: The job was posted or listed as a case management nurse?
- A: That is correct.
- Q: They then hired you as a case management nurse?
- A: Yes.
- Q: Then in the same breath they told you you would work as a staff nurse?
- A: Yes.
- Q: Since they were paying you, you didn't ask any questions?
- A: Yes.
- Q: The entire time that you have worked for the sanitation department, you have worked as a staff nurse?
- A: Yes.

four days a week, in addition to assigning and overseeing the work of the other nurses in the clinic.

Specifically, Ms. Procopio testified that her duties require her to question a patient as to his symptoms and any medication he may be taking. She stated, "I will make sure the medication does not cause drowsiness before he goes back to work and drives a 4,000-ton truck . . . I see the prescription and he tells me how ill he is. I will check the stomach to see if he has pains and whatnot." She draws blood, performs EKG's and urine and breathalyzer screenings. As to job applicants, she also conducts vision and hearing tests, takes blood pressure readings and checks other vital signs. When a sanitation worker is injured, Ms. Procopio authorizes voluntary screening for Human Immunodeficiency Virus infection and initiates hepatitis vaccination.

The witness testified that she uses a number of forms in her job. These include questionnaires (NYSNA Exs. 1,4 and 14), reporting forms for testing of the patient's vision (NYSNA Ex. 2), hearing (NYSNA Ex. 3), urine toxicology (NYSNA Ex. 5), breathalyzer results (NYSNA Ex. 15), and electrocardiogram (NYSNA

Ex. 16). She also uses a form to grant "walking" privileges (NYSNA Ex. 10),²³ as well as forms on which are recorded medical observations and recommendations made by medical personnel. (Tr. NYSNA Exs. 6, 7, 8, 9, 11 and 13)

As to the work of CMN Sarah Manning, the witness testified that Ms. Manning's duty is solely to monitor "C" category sanitation workers, i.e., those out for thirty days or more on extended sick leave and those who wish to be considered for disability or retirement. The witness further stated that Ms. Manning refers the matter to the case management doctor who in turn presents the case to the medical board or to the retirement system. Ms. Procopio testified that Ms. Manning performs no physical examinations, adding that, in Ms. Manning's absence, no other nurse covers her duties. This is in contrast with the practice by Nurses Cammerano, Negron and Procopio, who cover for each other in case of absence.

The witness also testified that the only form Ms. Manning uses in common with the other nurses at the Department clinic is the Medical Progress Notes used by all medical personnel to record observations and notations about a presenting

²³ "Walking privileges means he can walk f or two hours a day for four specific categories which are psychiatric, any type of surgery below the belt, a broken bone and cardiac."

patient. (NYSNA Ex. 13) A form not used by other nurses is for Case Management Transmittal. (NYSNA Ex. 12) The witness stated that this form is authorized by a non-case-management physician in the Department for transmittal to the case management physician. She explained that it is actually Ms. Manning who fills out the form and transmits it to the appropriate personnel.

As to interaction with other personnel, Ms. Procopio said that she works with a physician's assistant who also sees department members who come to the clinic.

[NYSNA Unit]

Latha Catlin testified for NYSNA. She has held the position of Assistant Director for Economic and General Welfare for four years. In this position, she supervises nurses "that go out to the facilities and represent nursing," as she described it. She is a registered nurse and previously was a staff nurse with HHC at Kings County and Bellevue Hospitals for ten years. She described HHC as providing not only "critical care" in the hospital setting but also out-patient care in neighborhood clinical settings. These clinics, she stated, provide, inter alia, diagnostic and treatment services in addition to ambulatory surgery.

Ms. Catlin testified that NYSNA represents certain nurses currently employed by the Department of Sanitation in its health clinic located on Hudson Street in Manhattan. She also testified that NYSNA currently represents certain nurses employed by the Department of Correction; these are nurses who, she stated, work at incarceration facilities. She further explained that the nurses employed at any of the facilities which NYSNA represents are involved in performing physical examinations of employees at those facilities. The salary for staff nurses represented by NYSNA, she said, ranges from \$40,372 to \$55,756.

D.C. 37 Evidence

[Health Services Unit]

Zachary Ramsey testified for D.C. 37. He has held the position of Assistant Director for Research and Negotiations for four and a half years, having negotiated several unit contracts between the City of New York and, intra alia, the Health Services Unit, consisting of locals with various titles in the health field including nurses, psychologists and therapists, employed by the Health and Hospitals Corporation and mayoral agencies.

Describing titles in the Unit, Mr. Ramsey testified that the Public Health Nurse works in the school health program of the Department of Health dealing with sexually transmitted

diseases, in the communicable diseases unit, in child health-care immunization, and in community care. Mr. Ramsey said the duties of the Public Health Nurse include maintaining patient records and conducting examinations.

Mr. Ramsey testified that the qualifications for the title of Public Health Nurse include a license as a Registered Nurse in New York State, plus, in some "areas," a master's degree. The salary for the Public Health Nurse ranges, he said, from \$35,000 to \$55,000, adding that a new unit contract was under negotiation at the time he testified.

Mr. Ramsey also testified that the Health Services Unit includes the Physician Assistant, who aids the physician in examining patients, "such as a nurse would," following up on the patient, and maintaining records. The salary for the Physician Assistant ranges, Mr. Ramsey stated, from \$30,000 to \$44,000.

The Health Services Unit of D.C. 37 also encompasses the title of Pediatric Nurse, Mr. Ramsey stated. Employees in this title work in the Child Health Center of the Department of Health, and, according to the witness, the salary structure is virtually the same as that of the Public Health Nurse.

In addition to these titles, Mr. Ramsey testified that the Unit includes the title of Medicolegal Investigator, in the Medical Examiner's Office, who physically inspects decedents'

bodies and death scenes to ascertain potentially causative circumstances. They authorize the release to the morgue. They must be Nurse Practitioners or Physician Assistants as well. The salary scale of the Medicolegal Investigator, Mr. Ramsey testified, is \$35,000 to \$46,000.

The Health Services Unit also includes the Nurse Anesthetist. Employees in this title, according to the witness, anesthetize patients for surgery. The Nurse Anesthetist must be a Registered Nurse, certified to perform anesthesiology. The witness testified that the salary for this title ranges from \$34,000 to \$46,000. As to the title of Medical Utilization Review Analyst ("MURA"), Mr. Ramsey testified that the salary structure ranges from \$28,000 to \$39,000.

History of Bargaining

Regarding history of bargaining, Kathryn Borthwick, CMN-FD, witness for the FN/UFT, testified that she and her colleagues in the Fire Department approached NYSNA circa seven years ago about representation of their unit for collective bargaining purposes,, "but they said we were too small, they didn't want to deal with us." She added that D.C. 37 also "didn't seem interested either." After approaching the Uniformed Firefighters Association and the Uniformed Fire Officers

Association about their representing the nurses, Ms. Borthwick stated, "I knew a nurse and that is how I arrived at the Federation."

Nilsa McNamara, CMN-PD, witness for the FN/UFT, testified that she and her colleagues in the Police Department sought representation by NYSNA, but that "the nurses were just not interested." She stated further that, for the last eight years, her unit has not been approached by any employee organization other than the United Federation of Teachers which did contact them. Ms. McNamara described the overture by the UFT as an:

"historical moment, being that we have never had any type of representation; and this is the first time I would say in the last year that the UFT approached us that we have had someone to fall back on if we had any questions or problems, we ask them. And they have been kind enough to do that for us, even though they are not legally representing us presently."

Latha Catlin, witness for NYSNA, testified that two CMNs in the Police Department contacted her, asking NYSNA to file a petition to institute the instant representation proceeding. She added that the call instigated the filing of a petition, (RU-1122-92).

Positions of the Parties

New York State Nurses Association (NYSNA)

NYSNA maintains that all the Case Management titles should be accreted to Certification No. 30-82, as amended, which it holds. NYSNA contends that the duties of the Case Management Nurses are similar to those of nurses at HHC and other City agencies whom NYSNA currently represents. The union also states that Case Management Nurses function in a clinical setting similar to the clinics operated by the HHC and other City agencies where nurses represented by NYSNA are assigned.

NYSNA asserts that the similarities which it espouses between the CMNs and nurses whom it represents at the HHC and at other city agencies are exemplified in the unit of five nurses employed by the Department of Sanitation. The union further states that, except for the head nurse's responsibilities as "overseer," there is no difference among the duties and responsibilities of the five nurses, contending that they all perform the same work and cover for each other.

NYSNA contends that there is no record evidence that Case Management Nurses share any involvement with nurses represented by the Health Services Unit of D.C. 37. On the other hand, because the unrepresented CMNs in the Department of Sanitation are supervised by a head nurse who is represented by

NYSNA, and because of the "interchange" between the unrepresented nurses and the NYSNA-represented nurses, including a staff nurse represented by NYSNA, NYSNA submits that a "clear and direct relationship" exists between nurses in NYSNA's bargaining unit and the unrepresented nurses in the Department of Sanitation. Therefore, NYSNA argues, the unrepresented nurses should be accreted to its Certificate No. 30-82, as amended.

In sum, NYSNA submits that common supervision and interchange between the nurses which it represents and the unrepresented nurses at the Department of Sanitation are factors which the Board must consider in making the unit determinations at issue. The union contends that a direct relationship exists between these groups of nurses which does not exist between the CMNs and any nurses represented by D.C. 37.

Citing Decision No. 12-91 for the policy discouraging fragmentation of bargaining units, NYSNA argues that a separate unit limited to the Case Management Nurses in the Police, Fire, Correction and Sanitation Departments would be inappropriate. Therefore, the union states that the question before the Board is whether (i) the Case Management Nurses should be accreted to one or the other of NYSNA's unit or the Health Services Unit of D.C. 37 or (ii) the Case Management Nurses should be permitted to express their preference for a unit in a self-determination election.

Federation of Nurses/UFT (FN/UFT)

The FN/UFT states that, while Case Management Nurses function in employee health care clinics in several agencies of the City, their daily functions and operations do not exemplify the same type of work done by public employees in other nursing or health care titles. For this reason, the FN/UFT asserts, employees in the title of Case Management Nurse should be certified as a separate bargaining unit and allowed to determine their collective bargaining agent by election.

According to the FN/UFT, CMNs work for departments within the City of New York whose primary functions are other than health care. The union describes the CMNs' duties as monitoring sick and injured employees and enforcing departmental policy regarding absences due to long-term illness and substance abuse. The union asserts that the nursing duties of CMNs are ancillary to their primary job function of enforcing departmental policy.

The FN/UFT further asserts that CMNs share a greater community of interest with the nurses employed by the Board of Education than they share with the nurses employed by the HHC and the Department of Health in that both groups of nurses work for employers whose primary purpose is other than health care and they allegedly are supervised by non-health professionals. They

arguably share similar duties in terms of follow-up of sick employees and students and in enforcement of departmental policy.

The FN/UFT argues further that job duties per se do not establish a community of interest. The union cites Decision No. 6-69 for the proposition that location of employment, in addition to duties and responsibilities, could be a determining factor as to unit placement and therefore that nurses.²⁴

While NYSNA and D.C. 37 are parties to the instant consolidated proceedings, FN/UFT argues that neither employee organization exhibited interest in representing the petitioned-for CMNs. The union cites Decision No. 31-73 for the proposition that the Board may certify a separate bargaining unit based not only on "duties, skills, responsibilities and interests" of the employees within it, but also that "[t]he Board went further in allowing the unit to be represented by a separate representative

²⁴ Professional Public Health Nurse Association and NYSNA and L.436. D.C. 27, AFSCME, and City of New York (Docket Nos. R-64-67, R-87-67, RE-1-68, RE-2-68, RU-20-68, RU-29-68). (Public Health Nurses should remain in separate bargaining units because of, inter alia, the absence of interchange between the two groups of nurses, located as they are in separate environments, i.e., ambulatory care clinics for public health nurses on one hand and, on the other hand, acute care facilities for hospital nurses.)

because no interest was exhibited by any other representative body. (Emphasis added.)"²⁵

The FN/UFT cites Decision No. 65-73 for the proposition that the Board's policy against non-proliferation of bargaining units is not immutable.²⁶ The union argues that the bargaining position of the employees whose representation is sought herein would be weakened by accretion of a unit of Case Management Nurses to one of the existing bargaining units comprised of public employees who perform different functions for agencies which are primarily concerned with health care. For these

²⁵ The Doctors Association of the City of New York. and The Public Health Physicians Association. and The Committee of Interns and Residents. and The Uniformed Fire Officers Association. and The Captains Endowment Association, and The Podiatry Society of the State of New York. and The City of New York and-Related Public Employers, Docket Nos. RU-282-71, RU-289-71, RE-22-72. ("We have hereinabove found that a unit consisting of Interns, Residents, Dental Interns, Dental Residents and Junior Psychiatrists is appropriate for collective bargaining. The committee of Interns and Residents is the certified representative of this unit under § 1173-3.0(1)(3) [currently, § 12-303 (1)] of the NYCCBL and no other union seeks to represent these employees. Therefore, we shall not disturb that unit.")

²⁶ Legal Services staff Association and Council Against Poverty (HRA) and Community Action for Legal Services, Inc., and Delegate Corporations of CALS, Docket Nos. RU-340-72 and RE-25-73. (The long-standing policy against fragmentation of bargaining units was not adhered to where factors such as working conditions, personnel policies governing the petitioned-for employees, the history of bargaining and interchange among employees militated against adherence to the non-fragmentation policy. The policy is restated more accurately thusly: where relevant factors have no particular bearing on the size or scope of the unit to be formed, the largest possible unit will be preferred by the Board.)

reasons, and because contact between Case Management Nurses and members of bargaining units represented by NYSNA and D.C. 37 arguably is minimal or non-existent, the FN/UFT argues that the CMNs should be permitted to choose from among the three petitioning unions as to which will be their representative for purposes of collective bargaining.

D.C. 37

D.C. 37 argues that the Case Management Nurses should be accreted to its Certification No. 28-78, as amended, covering the Health Services Bargaining Unit which represents various titles in the health care profession in the City of New York with a salary range from \$35,000 to \$56,000.

Pointing to the Board's policy of non-proliferation of bargaining units, D.C. 37 argues that the creation of a separate unit comprised of Case Management Nurses would have a negative effect on sound labor relations and on the efficient delivery of services which the CMNs provide. The union cites case law for the proposition that the unique needs of employees in any given title can be addressed in collective bargaining and do not justify the creation of a separate unit.²⁷

²⁷ Decisions No. 12-91, 9-88, 13-85, 25-79 and 22-75.

As to which existing bargaining unit should be certified to represent the CMNs who are the subject of the instant consolidated petitions, D.C. 37 argues that the CMNs share the greatest community of interest with employees who hold titles in its Health services Bargaining unit. Pointing to the civil service job descriptions of employees in the Unit, D.C. 37 states that positions represented by NYSNA require a license to practice and contemplate what D.C. 37 describes as "hands-on" nursing, including diagnosis and treatment.

In comparison, while a nursing license is required for some titles represented by D.C. 37 and while some perform "hands-on" medical care, the unit represented by D.C. 37 also consists of employees in titles who do not render "hands-on" service, using their knowledge of medicine to perform non-clinical tasks. These include forensic investigations, wherein Medicolegal Investigators take possession of corpses, interview witnesses, identify evidentiary objects, testify in court, prepare reports, and maintain records of investigations. The Medical Utilization Review Analysts ("MURAs") analyze patient care records to discern compliance with standards of medical care pre-set by third-party reimbursers and regulatory agencies. D.C. 37 notes that the Board found in favor of D.C. 37 over the petition of NYSNA to represent employees in the MURA title on the grounds that,

notwithstanding their nursing qualifications, employees in the MURA title review and analyze cases involving third-party payors rather than provide direct patient care and teaching of patient care techniques.²⁸

The primary role of the CMNs, as D.C. 37 describes it, is not to treat patients but to track the cases of injury and illness among various segments of municipal public employees. The majority of the duties performed, the union continues, are administrative under the direction of physicians, i.e., taking phone calls, following up regarding the caller's request or problem, referring employees to "outside" services, retrieving case files, and scheduling appointments. Taking and recording patients' vital signs, obtaining medical histories, and such are only incidental to the predominantly administrative work of the CMNs, the union argues.

The salary structure of the CMNs, i.e., approximately \$35,000, is comparable, according to the union, to that of other professional titles such as the Public Health Nurse, i.e., \$35,000 to \$56,000, and Medicolegal Investigator, i.e., \$35,00 to \$46,000. The union also states that CMNs receive ultimate supervision from non-medical, rather than medical, personnel.

City

By letter of January 11, 1993, the City opposed the application by the FN/UFT to intervene in the instant proceedings, based on the City's longstanding policy against proliferation of bargaining units. As to intervention by D.C. 37, the City took a neutral position.

Discussion

Section 12-309b(1) of the New York City Collective Bargaining Law ("NYCCBL") empowers the Board:

to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which unit shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations

Title 61, § 1-02(j) of the OCB Rules, formerly § 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining, sets forth criteria to be applied by the Board in making determinations of appropriate unit placement of employees. The Rules provide:

In determining appropriate bargaining units, the Board will consider, among other factors:

1. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
2. The community of interest of the employees;
3. The history of collective bargaining in the unit, among other employees of the public employer, and in similar

public employment;

4. The effect of the unit on the efficient operation of the public service and sound labor relations;
5. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
6. Whether the unit is consistent with the decisions and policies of the Board.

These criteria are an implementation of the provisions of § 207(1) of the Taylor Law²⁹ which govern unit determinations made by this Board as well as by the New York State Public Employment Relations Board, and are substantially equivalent in effect thereto.

In the instant matter, the issue before us is whether, consistent with the criteria quoted above, the titles at issue should be certified to a new bargaining unit or should be added by accretion to one of two previously certified units. Three of the above factors -- community of interest, history of collective bargaining, and the effect of the unit on the efficient operation of the public service and sound labor relations -- are of particular significance in the instant proceeding.

²⁹ Civil Service Law, Article 14, § 200 et seq.

As to whether the CMN titles share a community of interest with a unit certified to one of the petitioners or have interests so unique as to merit the creation of a separate unit, we consider the question of community of interest first, weighing specifically but not exclusively the following factors:

1. the job duties and responsibilities of the employees,³⁰
2. their qualifications, skills and training,³¹
3. interchange and contact,³²
4. wage rates,³³
5. lines of promotion,³⁴
6. organization or supervision of the department, office or other subdivision.³⁵

The weight of the above factors, inter alia, may be accorded different values on a case-by-case basis.³⁶

³⁰ Decision Nos. 15-93, 16-86, 13-85, 18-81, 13-81, and 34-80.

³¹ Decision Nos. 15-93, 13-85, 13-81, and 34-80.

³² Decision Nos. 15-93, 29-77, 23-76, and 23-75.

³³ Decision Nos. 15-93, 13-85, 41-82, and 41-73.

³⁴ Decision Nos. 15-93, 34-80, 22-75, 42-74 and 45-72.

³⁵ Decision Nos. 15-93, 55-76, 65-73 and 61-71.

³⁶ Decision Nos. 15-93, 9-88 and 15-87.

We do not find that the interests of the CMNs are so unique as to require the creation of a separate bargaining unit. A review of the job duties and responsibilities fails to persuade us that the work of the CMNs is significantly different from the work performed by nurses and other "hands-on" health care workers employed by the city and the Health and Hospitals Corporation. We do not find that the nursing duties of CMNs are merely ancillary to their allegedly primary job function of enforcing the policy of their respective City Departments. In fact, we find the inverse to be so.

In particular, the testimony of witnesses for the FN/UFT reveals that the CMNs' function is to observe the signs and to note the symptoms of injury and illness of the members of their respective Departments, not merely for record-keeping purposes but for curative purposes. Indeed, Silvia Morris, Case Management Nurse with the Fire Department, testified to this fact when she explained that she and her CMN colleagues review X-ray films to detect abnormalities which might not be observed or flagged by radiology specialists. The curative aspect of the CMNs' work is further supported by the testimony of Ms. Morris concerning the caseload which each CMN is required to follow. "When the guy comes in," she explained, "you go into the room with the doctor and you watch. And you advise." (Emphasis added.)

The testimony of the CMN witnesses indicates that their work involves much more than merely deciding whether a patient should present to the clinic for an examination, or enforcing sick leave policy and substance abuse policy, or maintaining minimum physical job requirements, as the FN/UFT suggests. The testimony paints a vivid picture of nurses engaged in the routine management of cases for curative purposes, notwithstanding the requirement that they document communication with patients and physicians as well as medical progress. The testimony also points to the primary function of CMNs as "'hands-on" care of patients, rather than administrative tracking of them as D.C. 37 contends, although administrative work is necessarily incidental to the management of their cases.

As an example of the initiative which CMNs routinely exhibit in the performance of their duties, Silvia Morris, CMN with the Fire Department, explained that, in the absence of the case management physician, the CMNs are responsible for evaluating laboratory values, such as blood sugar levels, and initiating appropriate action, e.g., removing an employee from active duty.

The testimony of Kathryn Borthwick also supports our finding of the curative aspect of the work of CMNs. She testified, "[T]hey draw blood, put on Holter [cardiac] monitors,

remove sutures, do dressing changes, [for] which a lot of them are burns, splinting[, t]hings of that nature." They perform inoculations and test for infection by disease-causing microbes. They speak with uniformed workers in the field who have been exposed to toxic substances and pathogens. The fact that CMNs check charts, requisition documents, complete forms and respond to telephone inquiries does not diminish the therapeutic aspects of their work. only one CMN, viz., Sarah Manning of the Department of Sanitation, performs no physical examinations or screening. However, all CMNs, including Ms. Manning, track the medical progress of their patients with the purpose of returning them to service as quickly as medically indicated.

While the record indicates little interchange between CMNs and other nursing personnel, the interchange between CMNs and physicians within their respective Departments exemplifies the role of CMNs as "hands-on" care-givers rather than as administrative functionaries. The record clearly shows that CMNs regularly communicate with physician specialists, e.g., radiologists and cardiologists, as well as case management physicians of their respective City Departments, with the goal of healing patients.

As for rates of pay, where, as here, the annual wage rates of the various groups are well within the same range this particular factor does not weigh in favor of either union.³⁷ The salary for the CMN ranges from \$35,334 to \$46,366. That is comparable to salaries of titles represented by D.C. 37: public health nurse from \$35,000 to \$55,000; physician assistant from \$30,000 to \$44,000; medicolegal investigator from \$35,000 to \$46,000; nurse anesthetist from \$34,000 to \$46,000; medical utilization review analyst from \$28,000 to \$39,000. It is also comparable, though less so, to the salary for staff nurses represented by NYSNA, which ranges from \$40,372 to \$55,756. Therefore, rate of pay is not dispositive of the issue here.

We do not credit the argument of the FN/UFT that the CMNs are supervised by non-health professional personnel. Kathryn Borthwick testified that, as to administrative matters, she and her CMN colleagues in the Fire Department answer to the Chief in Charge of the Bureau, but as to medical matters, they answer to the Chief Medical Officer of the Bureau of Health Services. He is a surgeon. Witness Nilsa McNamara testified that she and her colleagues in the Police Department report first to a non-physician but ultimately to the Chief Surgeon of the Department.

³⁷ Decision Nos. 15-93 and 15-87.

In addition to the traditional factors which we consider in finding community of interest, we consider two factors unique to the instant case. They are (i) the clinical nursing experience mandated beyond the formal licensure requirements and (ii) the liability protection which their supervisors advise them to secure on their own. We conclude that such insurance protection would be obviated were the CMNs function limited to administrative duties.

As to history of bargaining, both parties opposing the FN/UFT in the instant proceeding have more extensive experience in bargaining on behalf of nursing personnel than the FN/UFT. We are impressed by the fact that authorization cards were submitted by the FN/UFT for all but one employee in the CMN-FD titles and by all employees in the CMN-PD title. While employee preference is indeed considered, it is not necessarily a controlling factor in our deliberations regarding an award of certification. Similarly, while the gratuitous efforts by the FN/UFT to assist the employees in the titles at issue are admirable, they do not outweigh the other factors which we must heed in making unit determinations.

Not the least of those factors is the effect of the certified unit on the efficient operation of the public service and sound labor relations. The policy against fragmentation of

bargaining units is not simply a rule mandating large units, nor does it even establish a rule that the best or most appropriate unit in all cases is the largest possible unit. Where relevant factors in a given case have no particular bearing upon the size or scope of the unit to be formed, the largest possible unit will be preferred by the Board.³⁸ The Board will not blindly adhere to this policy when the particulars of a given case, measured by the statutory criteria, call for a different result; however, it has vigorously pursued a policy of unit consolidation.³⁹ We decline to deviate from that policy now.

Creation of a new citywide unit as contemplated by the FN/UFT possibly could unite the CMNs under one certification and address the criterion set forth in the Rules regarding which unit will assure public employees the fullest freedom in the exercise of their collective bargaining rights.⁴⁰ It also could possibly permit this group of employees with similar responsibilities to present their needs to the city as one community, as the FN/UFT asserts. In the past, we have held that it may be appropriate to certify a separate unit where, when taken together with other

³⁸ Decision Nos. 25-79 and 65-73.

³⁹ Decision No. 57-78.

⁴⁰ Section 1-02(j)(1) of the OCB Rules.

factors, no interest was expressed by any union other than the petitioning one for the representation of the bargained-for employees.⁴¹

We find, however, that the record before us does not support that result here. witnesses Borthwick and McNamara implied a lack of interest in representing the CMNs on the part of NYSNA and D.C. 37 at least as to past practice, but we must credit the testimony of NYSNA Witness Latha Catlin who stated that the instant proceeding was instituted as a direct result of inquiry by two CMNs in the Police Department. The participation by all three unions in the instant proceeding evinces sufficient interest so as to permit us to rule out this factor as dispositive of the issue of unit determination.

⁴¹ Decision No. 57-78 (A separate unit of Fire Alarm Dispatchers is found to be appropriate inasmuch as "the two titles in question are exclusively used by the Fire Department, . . . **no other employee organization has expressed an interest in representing these titles** and being cognizant of the history of bargaining and giving effect to the fullest freedom of the employees herein to exercise their right of self-organization); and

Decision No. 31-73 (The unit consisting of Interns, Residents, Dental Interns, Dental Residents and Junior Psychiatrists is found to be appropriate under the statutory criteria and inasmuch as "**no other union seeks to represent these employees**" and its certification to the Committee of Interns and Residents will not be disturbed.) (Emphasis added.)

We, therefore, do not find that the interests of the CmNs are so unique as to require the creation of a separate bargaining unit. We believe instead that their interests can be addressed in the normal course of collective bargaining within one of the existing units sought to be accreted in the instant proceeding. For these reasons, we decline to certify a separate unit for collective bargaining purposes and we therefore dismiss that portion of the petition by the FN/UFT which seeks that goal.

We next turn to the question of the relative appropriateness of two pre-existing units for inclusion, by accretion, of the CMNs. In making accretion determinations, the Board considers two factors:

- (1) whether the title -- because of its similarity or close relationship to unit titles -- would have been included in the unit had it existed at the time of the original certification; and
- (2) the comparative size of the two groups.⁴²

Since both the units to which the petitioning unions request accretion include substantially more employees than the number of Case Management Nurses sought to be accreted, we turn our attention to the appropriateness of each unit.

⁴² Decision Nos. 15-93, 15-87, 23-75, 30-71 and 39-69.

NYSNA and the FN/UFT have asked the Board to consider an election, pursuant to Section 1-02(1), formerly § 2.12, of the OCB Rules,⁴³ to ascertain the preferences of the employees at issue. While the function of this Board generally is to provide the machinery whereby the desires of the employees may be ascertained, we do not base our determination of an appropriate unit solely on an employee's right of self-determination.⁴⁴ In a particular case, employees' wishes may be considered as one factor in determining the issue. Such consideration, however, is balanced against considerations of efficiency of operations of the public service and sound labor relations. It is our practice first to make determinations of appropriate bargaining units and then to allow expressions of employee preference if more than one unit has been found to be appropriate.⁴⁵

⁴³ Section 1-02 (1) of the Rules provides, in relevant part, as follows:

Elections--participation; eligibility. (1) If the Board determines, as part of its investigation, to conduct an election, it shall determine who may participate in the election and appear on the ballot, the form of the ballot, the employees eligible to vote in the election, and the rules governing the election.

⁴⁴ Decision Nos. 15-93, 1-91, 54-75 and 46-75.

⁴⁵ Decision Nos. 15-93, 1-91, 15-87 and 14-87.

Considering whether the titles at issue share a community of interest with one or the other of the existing units, we note that NYSNA has demonstrated a significant similarity in job duties and responsibilities between these titles and titles already certified to its existing unit. NYSNA represents titles which require licensure as a Registered Nurse. While some titles represented by D.C. 37 also require such licensure, the nurses represented by NYSNA, unlike the nurses represented by D.C. 37, are engaged in "hands-on" patient care. Although the record indicates that the interchange between CMNs and nurses represented by NYSNA is virtually insignificant, it appears to be more prevalent than any interchange with members of the Health Services Unit of D.C. 37. In the Department of Sanitation, the CMNs who are not represented work virtually interchangeably with the two nurses who are represented by NYSNA.

While the rate of pay for CMNs is more in line with that of comparably educated nurses in the D.C. 37 Health Services Unit than with the pay of NYSNA nurses, the wages of NYSNA nurses are similar enough to the CMN wages as to render this aspect of community of interest non-dispositive. As to supervision, CMNs are accountable to medical personnel, as are nurses represented by NYSNA but unlike the majority of licensed employees represented by D.C. 37.

Because we have denied the petition of the FN/UFT to certify a separate bargaining unit consisting of the petitioned-for titles, and because we find that employees in the CMN titles share a greater community of interest with nurses represented by NYSNA than with members of the Health Services Unit of D.C. 37, we find, therefore, that the Case Management Nurse titles herein should be added by accretion to Certification No. 30-82, as amended, held by NYSNA.

ORDER

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

DIRECTED, that the titles of Case Management Nurse (Police Department) [Title Code No. 50958], Case Management Nurse (Fire Department) [Title Code No. 50959], Case Management Nurse (Department of Correction) [Temporary Title Code No. 06240], Case Management Nurse (Department of Sanitation) [Temporary Title Code No. 09968], and Senior Case Management Nurse (Department of Sanitation) [Temporary Title Code No. 05207], be certified to Certification Na. 30-82, as amended, held by the New York State Nurses Association.

Dated: New York, New York
March 17, 1994

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER