



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL #68, AFL-CIO

Petitioner

and

TOWN OF MERRIMACK, NEW HAMPSHIRE

Respondent

CASE NO. A-0459:5

DECISION NO. 82-69

APPEARANCES

Representing Council 68, AFSCME:

James C. Anderson, Executive Director
Harding Hamilton
Samuel Walker
Ronald Dubois

Representing the town of Merrimack:

Gary W. Wulf, Chief Negotiator
James A. McSweeney, Town Manager

BACKGROUND

AFSCME, Council 68, filed a petition to modify a bargaining unit on February 1, 1982. The town of Merrimack filed a timely exception without specific details on February 9, 1982. I find no further exception filed by the Town.

On September 17, 1982, a hearing was held at the Merrimack Town Office Building commencing at 10:05 a.m. and adjourning at 12:26 p.m.

Attempting to define the issues at hearing, AFSCME presented the argument that in their belief, until within six months prior to the filing of the petition, the positions in question were within the bargaining unit although not staffed by employees eligible for membership. The Town presented the argument that the positions clearly never were covered and the modification petition was not a correct method under PELRB Rule 2.5 which suggests the electoral or negotiations process to modify an existing bargaining unit.

FINDINGS AND OPINIONS

Discussions of six-month timeliness are not appropriate; the six-month rule under RSA 273-A:6, VII applies to unfair labor practices. There are no time limits on a petition for modification of the bargaining unit.

Discussion of whether the positions were or were not covered by the original certification are moot. The only vehicle for clarifying that point would have been an unfair labor practice charge under RSA 273-A:5, 1 (h) and (i). The use of the petition to modify the bargaining unit recognizes that these positions are not presently covered. The only relief available from a petition to modify is to bring these positions into a bargaining unit; not to make whole for any alleged damage resulting from the positions not having been covered.

Both parties agree there is a community of interest between the positions encompassed by the petition and those already certified as the bargaining unit by PELRB. Determination of a bargaining unit is solely the jurisdiction of PELRB. The only methods of establishing or changing a bargaining unit is through a petition for certification or a modification petition. Under either circumstances, PELRB determines the appropriateness of a bargaining unit under RSA 273-A and PELRB Rules and Regulations, under a petition for certification.

After PELRB has determined the appropriate bargaining unit, an election may be held. An election cannot occur before PELRB determines a position is in a bargaining unit and, therefore, eligible to vote. When the parties agree to a bargaining unit or a change to the bargaining unit, PELRB must still determine the appropriateness of the positions. Negotiations alone do not satisfy RSA 273-A:8 or PELRB Rule 2. At any time there is a difference between an employer and an employee representative on the composition of a bargaining unit, the question can only be resolved by PELRB. At any time there is agreement on the establishment or a change to a bargaining unit, the agreement must be submitted to PELRB to determine the appropriateness of the bargaining unit. Therefore, AFSCME, Council 68 correctly put the issue before PELRB in the form of a modification petition.

Respondents to a modification petition should also note Rule 2.5, a, refers to Rule 1.2. Under Rule 1.2, e, exceptions must contain a "clear and concise explanation of any factual or legal reasons why the Board should not entertain the petition".

Consistent with RSA 273-A:8, 1, I find there is a community of interest between the positions covered by the existing certification and the positions covered by the Modification Petition, as amended, in that the employees function within the same organizational unit. I further find this new bargaining unit to be appropriate under RSA 273-A:8 and PELRB Rule 2.2.

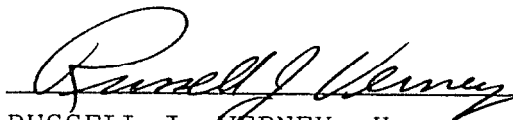
The differences in conditions and terms of employment between members of the previous bargaining unit and non-members of the previous bargaining unit who will now enter the bargaining unit necessitate the parties to negotiate the transition.

RECOMMENDATIONS

As hearing officer, I recommend that the full board of the PELRB find the request of AFSCME, Council 68, for modification of the existing bargaining unit appropriate and so certify the new bargaining unit adding the positions of "Equipment Operator I and II" at the Landfill Division and "Mechanics I and II" at the Public Works Department.

I further recommend that PELRB order the parties to enter negotiations within thirty (30) days to effect the transition for conditions and terms of employment for the affected positions consistent with the existing collective bargaining agreement.

I finally recommend that the PELRB uphold the findings and opinions of the hearing officer and implement the recommendations of the hearing officer.



RUSSELL J. VERNEY, Hearing Officer

Signed this 21ST day of October, 1982