



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ASSOCIATION OF PORTSMOUTH  
TEACHERS, NEA-NEW HAMPSHIRE

Complainant

v.

CITY OF PORTSMOUTH,  
SCHOOL DEPARTMENT

Respondent

CASE NO. T-0251:15  
(Modification Petition)

DECISION NO. 96-062

#### APPEARANCES

##### Representing Association of Portsmouth Teachers:

Jo Campbell, Uniserv Director

##### Representing City of Portsmouth:

Thomas Cayten, City Negotiator

##### Also appearing:

Peter Steucek, NEA-New Hampshire  
Sally M. Martin, NEA-New Hampshire  
Tom Staple, NEA-New Hampshire  
Suzanne Schrider, Portsmouth School Board

#### BACKGROUND

The Association of Portsmouth Teachers, NEA-New Hampshire (Association) filed a Modification Petition (Petition) on March 18, 1996 seeking to remove three (3) positions from the bargaining unit, Coordinator of Special Education, Portsmouth Early Education Program (PEEP) coordinator and Assistant to the Principal. The City of Portsmouth (City) filed its answer on April 1, 1996 after which the parties agreed on, requested, were

scheduled for and canceled a pre-hearing conference in this matter. Thereafter, the case was heard by the PELRB on June 25, 1996.

#### FINDINGS OF FACT

1. The City of Portsmouth is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Association of Portsmouth Teachers is the certified and recognized bargaining agent for all professional employees of the Portsmouth School Department who are required to hold an appropriate credential issued by the State Board of Education under its regulations governing the certification of professional school personnel except that members of the Superintendent's Advisory Council, consisting of principals, directors, coordinators and central office administrators, are not included. This unit composition is reflected in the recognition clause of the parties' CBA for 1994-1996 (Association Exhibit No. 6). There is no evidence that the employment circumstances of positions to be excluded have changed since that agreement was negotiated.
3. The modification petition filed on March 18, 1996 sought to exclude the Coordinator of Special Education, the Portsmouth Early Education Program coordinator and the Assistant to the Principal from the bargaining unit. During the course of the hearing and after the conclusion of the petitioner's case, Member Roulx moved to dismiss those portions of the petition dealing with the Coordinator of Special Education and the Portsmouth Early Education Program Coordinator positions for failure to comply with Rule 302.05 which requires proof of the requisite change of circumstances concerning the positions in question. That motion passed unanimously, leaving the Assistant to the Principal's position as the only item requiring presentation by the City and additional consideration by the PELRB.
4. The incumbent Assistant to the Principal is John Tibbetts. He has held that position since the 1992-93 school year. (City Exhibit Nos. 1 a through e and 3.) He receives a teacher contract with an

extra stipend for his duties as assistant. Formerly he taught courses in addition to being assistant; currently his duties are such as to have precluded his teaching any courses during the 1995-96 school year. He assists the principal in coordinating the efforts of non-professional, custodial staff (Association Exhibit No. 3 and 4) and coordinates disciplinary matters with professional staff (Association Exhibit Nos. 1 and 2). There is no evidence that the foregoing responsibilities were a significant or meaningful change in the incumbent's job responsibilities since the current 1994-96 CBA was negotiated and later signed on October 18, 1995. (Joint Exhibit No. 1)

5. The self-styled job description for the Assistant to the Principal (City Exhibit No. 3) shows him meeting with students and parents daily on issues of discipline, in and out of school suspensions, outreach programs, behavioral prevention and conflict resolution. It also shows daily contact and "collaboration" with faculty and staff, i.e., principal, guidance counselors, home/school coordinator, substance abuse/student assistance counselor, school nurse, and school outreach personnel. It discloses no supervisory or evaluative functions of the Assistant to the Principal over the foregoing job categories and, thus, no "significant exercise of discretion" under RSA 273-A:8 II. This is consistent with the testimony offered by the Superintendent-elect as to the incumbent's non-supervisory role. There is also no evidence that the job functions, annotated by Tibbetts on January 31, 1995, changed since the negotiation and execution of the CBA on October 18, 1995. Superintendent-elect Schrader testified that Tibbetts's job functions have consistently concentrated on disciplinary issues for the past four years.

#### DECISION AND ORDER

The positions of Coordinator of Special Education and the Portsmouth Early Education Program Coordinator have been removed from further consideration under the pending petition by the PELRB's motion directing that they be dismissed for failure to comply with Rule 302.05. Having done so, no further comment is offered on these two positions; their placement remains unchanged from the status quo.

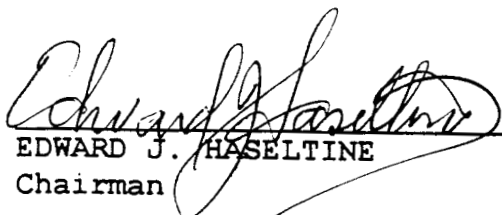
The pending modification petition asserts that the Assistant to the Principal is an administrative or supervisory position and, therefore, should be removed from the bargaining unit. We disagree. Both the self-styled job description written by Tibbetts (City Exhibit No. 3), who did not testify, and the testimony of the Superintendent-elect gave no indication that his duties involved the "significant exercise of discretion" which would preclude his remaining in a bargaining unit with other employees whom he supervised. RSA 273-A:8 II. Even the incumbent's annual renomination is as a teacher, not as an administrator.

Likewise, Rule PUB 302.05 provides that a modification petition may be denied if "the petition attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force." Notwithstanding that the job title changed to "Assistant to the Principal" from "administrative assistant" between the 1994-95 school year and the 1995-96 school year, the functions, concentrating primarily on issues of student discipline, remain the same. The concerns and responsibilities involving issues of student discipline date back at least four years, well before the current 1994-96 CBA was negotiated. Thus, the thrust of the responsibilities performed by Tibbetts has not changed since the 1994-96 CBA came into effect. A change in circumstances relating to job responsibilities, if any, occurred prior to the current CBA and, thus, is barred from being considered as a proper subject of a modification petition in these proceedings.

Accordingly, the modification petition is denied in its entirety and the composition of the bargaining unit remains unchanged.

So ordered.

Signed this 15th day of AUGUST, 1996.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members Richard Roulx and Richard Molan present and voting.