



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER TEACHERS' UNION/
NEA-NEW HAMPSHIRE

Complainant

v.

DOVER SCHOOL BOARD

Respondent

CASE NO. T-0392:4

DECISION NO. 97-006

APPEARANCES

Representing Dover Teachers' Union/NEA-NH:

Theodore Wells, UniServ Director

Representing Dover School Board:

Thomas Flygare, Esq.

Also appearing:

Peter Wotton, Dover School District
Bev Conway, Dover Teachers' Union
Gerald A. Daley, Dover School District

BACKGROUND

The Dover Teachers' Union (Union) filed unfair labor practice charges against the Dover School Board (Board) on September 25, 1996, charging violations of RSA 273-A:5 1 (a), (g), (h) and (i) for assigning all of the duties of the Athletic Director, a bargaining unit position, to a newly created position, that of Director of Athletics and Physical Education. On September 30, 1996, the School Board filed its answer in the form of a Motion to Dismiss and a Petition to Modify the Bargaining Unit. On October 12, 1996, the Union's Objection to the Petition to Modify was received and, on November 2, 1996, the unfair labor practice charges were withdrawn. The School Board's Petition for Modification was heard before the undersigned hearing officer on November 21, 1996. The record remained open and was subsequently closed on November 25, 1996,

following the receipt of several job descriptions provided by Superintendent Daley.

FINDINGS OF FACT

1. The Dover Board employs teachers and other personnel in the operation of the Dover School System and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. Dover Teachers' Union, NEA-New Hampshire, is the certified bargaining agent for teachers and certain other educational personnel in the employ of the Dover School Board.
3. The Board and the Union are parties to a collective bargaining agreement (CBA), with an expiration date of August 31, 1996. A successor agreement has not been reached. Under the CBA, the Athletic Director was paid a stipend for his work arranging extra-curricular athletic activities.
4. Prior to this school year, the position of Athletic Director had been exclusively an extra curricular position held by a classroom teacher who was issued a teaching contract and paid a full teacher's salary in addition to the stipend for directing the after school athletics program. The position of Athletics Director has been understood to be a bargaining unit position until this school year. The job description for Athletic Director within the Dover School System is dated 1975. (Exhibit #1, Unfair Labor Practice Charge).
5. Dr. Gerald Daley, Superintendent of Schools, testified that there had been longstanding confusion regarding the scope of the Athletic Director's position. The Athletic Director received a greater portion of his total compensation from his teaching contract though he taught only two classes. He received a relatively small stipend of \$8,186.00 for directing team sports which took up most of his time. He supervised coaches who were also teachers within the same bargaining unit. The School Board desired to separate the teaching and administrative functions and a proposal to do so was introduced in April, 1996, then adopted by the Board in May, 1996.
6. The newly created position of Director of Athletics

and Physical Education was filled in August, 1996, when Peter R. Wotton joined the staff as the Director of Athletics and Physical Education.

7. Qualifications for the new position included a New Hampshire certification to teach physical education, four years' experience and a Master's degree. (Attachment #3, Petition to Modify) No qualifications are stated in the prior Athletic Director's job description. The position was held by a member of the teaching faculty who therefore met teaching certification requirements.
8. The duties of the new position are those of an administrator and supervisor. Unlike the now inactive position of Athletic Director whose main responsibility focused on high school athletics, the Director of Athletics and Physical Education (Attachment #3, Petition to Modify) has overall responsibility for the physical education program for all grades, kindergarten through 12. According to Dr. Daley, the new position will have a primary role in interviewing and recommending to the Superintendent candidates for physical education teaching positions. He is to supervise and evaluate those teachers and is responsible for curriculum and teaching methodology. He will recruit and evaluate team coaches as well and will perform other responsibilities formerly assigned to the Athletic Director. This position has no teaching duties.
9. When oral and written warnings are necessary for those, reporting to him, the Director of Athletics and Physical Education shall issue them. At present, this new position supervises more than thirty positions, of which at least nine are bargaining unit positions. That number is expected to increase. The Director of Athletics and Physical Education reports directly to the Superintendent as do building principals. Superintendent Daley testified that the prior Athletic Director reported to the high school principal contrary to the 1975 job description.
10. Peter Rodd Wotton testified that, in his four months with the Dover schools, he has begun teacher evaluations. He has imposed discipline in at least one instance of a safety violation by a physical education teacher and has verbally warned coaches against using profanity. Wotton feels that he has been given significant discretion in carrying out his duties. He seeks the input of building principals on personnel matters such

as evaluations but he is not bound by such input.

11. The option of excluding the position of Director of Athletics and Physical Education from the bargaining unit was raised by the Board during mediation. The mediator deferred to the jurisdiction of the PELRB.

DECISION AND ORDER

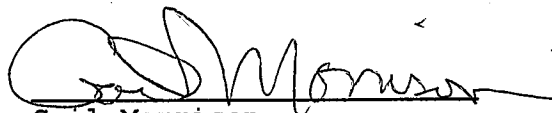
The decision by the Dover School Board to hire an administrator for the curricular and extra-curricular athletic programs, kindergarten through grade 12 inclusive, is a major policy decision which is statutorily reserved for the public employer under RSA 273-A: 1 XI, the "managerial policy" exception. The fact that the position will encompass duties formerly performed by the Athletic Director, a bargaining unit position, gives rise to this dispute.

The Dover School Board's request that the position of Director of Athletics and Physical Education be specifically excluded from the bargaining unit is granted. Based on the testimony and the job descriptions provided, the newly created position exercises significant supervisory discretion and so is supervisory or managerial in nature and is not properly included within this bargaining unit which consists of teachers and other non-supervisory personnel.

The position of Athletic Director that functioned prior to this year was akin to a "working supervisor" and did not exercise significant discretion making it excludable. Indeed, there is no request to exclude the position of Athletic Director from the bargaining unit. The position of Athletic Director will remain in the bargaining unit though the position will be vacant this year.

So ordered.

Signed this 16th day of January, 1997.



Gail Morrison
Hearing Officer