



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Winchester Teachers Association/NEA-NH

Complainant

v.

Winchester School Board

Respondent

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Case No. T-0317-6

Decision No. 2001-035

PRE-HEARING MEMORANDUM and ORDER

BACKGROUND

The Winchester Teachers Association/NEA-NH, (hereinafter referred to as the "Association") filed a Modification Petition with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") on March 27, 2001 seeking to include three positions within the existing bargaining unit. The three positions are that of school nurse, guidance counselor, and school social worker. The Association alleges that all positions are (1) professional in nature; (2) share a community of interest; and (3) provide classroom instruction and/ or individual instruction directly and/ or indirectly through counsel provided to classroom teachers. In so doing, they participate in the educational mission of the school district as part of their job duties and responsibilities. Discussion has transpired between the parties regarding a later amendment of the modification petition to include an additional position for inclusion. This matter is addressed in the Decision Section of this order that appears below.

The Winchester School Board, (hereinafter referred to as the "Board"), filed its answer and objection to the Association's Petition for Modification on April 11, 2001. It asserts preliminarily that the petition attempts to modify an existing unit that was negotiated by the parties and that no circumstances have changed since the prior negotiations. Additionally, if the petition is not prohibited by the operation of Pub 302.05(b) of the Code of Administrative Rules, the Board asserts that these positions lack

the required community of interest; lack the requisite instructional responsibilities; have differing salary and benefit structures and that the guidance counselor, specifically, has supervisory responsibilities over members within the existing unit.

PARTICIPATING REPRESENTATIVES

For the Association: Mary E. Gaul, UniServ Director

For the District: Douglas S. Hatfield, Esquire for Margaret-Ann Moran, Esquire,

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the Association's Petition for Modification at this time is prohibited by operation of Pub 302.05 (b) of the New Hampshire Code of Administrative Rules because the composition of the bargaining unit by the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force.?
2. Whether or not the position of school nurse should be added to the existing bargaining unit?
3. Whether or not the position of guidance counselor should be added to the existing bargaining unit?
4. Whether of not the position of school social worker should be added to the existing bargaining unit?

WITNESSES

For the Association (Petitioner):

1. Richard Durkee, Association official
2. Donna Robinson, Guidance Counselor
3. Mary Gaul, Uniserv Director, NEA-NH, Association Negotiator
4. David Funkhouse, Principal, Elementary School
5. Julia Gresser, Guidance Counselor, Elementary School
6. Candace Sutton, School Nurse, Elementary School
7. Ellen Mendelson, School Social Worker
8. Lisa Johnson, Teacher (Title I)

For the Board (Respondent):

1. Carol Fritz, Principal, Jr./Sr. High School
2. Margaret Sullivan, Assistant Superintendent
3. Donna Robinson, Guidance Counselor
4. Douglas S. Hatfield, Esq., Board Negotiator

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Association:

1. Collective Bargaining Agreement, 1998-2001
2. Collective Bargaining Agreement, July 1, 2001
3. Department of Education Regulations Section 500
4. Association bargaining proposal
5. School Nurse resumes (2)
6. Department of Education standards
7. Job position descriptions (to be specified to the School Board's counsel)

For the Board:

1. Collective Bargaining Agreement, 1998-2001
2. Collective Bargaining Agreement, effective July 1, 2001
3. Employment Contracts of the nurse, social worker and guidance counselor
4. Job descriptions for the above positions
5. The proposals and responses of the parties in negotiations during 2000-2001

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than May 21, 2001.

DECISION

1. The Association has indicated its intent to file an amendment to add an additional position to their modification request, namely, a teaching position which is funded by Title I funds. The Board is to notify the Association, in writing, of its plan for inclusion or exclusion of this position from the bargaining unit on or before May 25, 2001 at 4:00 P.M. Thereafter, the Association may accordingly file its amendment, if necessary.
2. The party representatives shall forward any amendments to their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than June 1, 2001 at 4:30 P.M. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
3. The parties have agreed to cooperate with each other in the production of any relevant documents. Any inability to obtain documents relevant to this proceeding shall be brought to the PELRB's attention in writing with a copy of any request provided to the opposing party's representative.
4. After subsequent consultation between the parties regarding the presence of witnesses at the hearing, if either party deems it necessary to subpoena any witness, they may do so directly upon their own properly issued subpoena or request that one issue from the PELRB in accordance with the Code of Administrative Rules for the PELRB.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
6. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, June 12, 2001 beginning at 9:00AM.

Signed this 15th day of May, 2001.



Donald E. Mitchell, Esq.
Hearings Officer