



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Keene Facilities Management Association

Petitioner

v.

AFSCME, Council 93, AFL-CIO

Respondent

and

Keene School District

Respondent

Case No. M-0783

Decision No. 2001-097

MEMORANDUM and ORDER

BACKGROUND

On August 7, 2001, the Keene Facilities Management Association, (hereinafter referred to as the "Petitioner") submitted a petition to the PELRB pursuant to RSA 273-A:10 informing the PELRB of its desire to become the exclusive bargaining representative for a bargaining unit. The petition was not accepted on that date by the PELRB and was returned to the Petitioner because it was not complete in that it lacked an indication, called for in Section #6 of the PELRB form, whether the Petitioner and the public employer had reached agreement as to the composition of the unit. A copy of this incomplete Petition had been forwarded by certified mail to the incumbent exclusive bargaining representative (hereinafter referred to as "AFSCME") on August 7, 2001 addressed to a prior AFSCME address. That copy was eventually delivered to and accepted by AFSCME on August 9, 2001.

The Petitioner then resubmitted its completed petition to the PELRB and it was deemed "filed" on August 14, 2001. The filed petition now included a checkmark

indicating that agreement had not been reached between the public employer and the Petitioner as to the "composition" of this proposed unit. In substantive part, the August 14, 2001 filed petition sought recognition of the Petitioner as the exclusive bargaining representative for a unit comprised of thirty-four persons employed in the positions of "custodian, groundsman, head custodian, head groundsman, tradesman and utility person." The petition was accompanied by a number of individual signature cards representing that the petitioner had a sufficient "showing of interest", i.e. at least thirty (30) percent of the proposed unit membership. The positions listed in the Petition for Certification mirrored those presently represented by the incumbent AFSCME. The public employer is the Keene School District (hereinafter referred to as the "District"). While the Petitioner informed the District and AFSCME of its initial attempt to file its petition with the PELRB by forwarding copies to them, it did not forward a copy of its subsequent resubmission of the completed petition to the incumbent exclusive bargaining representative, i.e. AFSCME, that represents the interests of the same positions that the Petitioner thereby sought to represent.

Noting that there was a current collective bargaining agreement in place between the District and AFSCME that does not expire until June 30, 2002 and that there had been no prior forfeiture or decertification of the existing exclusive bargaining representative, the Executive Director of the PELRB contacted AFSCME to inquire as to whether or not it had been informed of the pending petition on file with the PELRB. It had not and it subsequently filed an objection to the petition on August 29, 2001 stating several omissions on the petition itself and that the valid petition was not filed in a timely manner. By letter of August 20, 2001 AFSCME notified the District of its intention to negotiate a successor collective bargaining agreement. By letter dated August 24, 2001 the Executive Director informed the Petitioner to forward a copy of its petition to AFSCME as the existing exclusive bargaining representative and by facsimile transmission on August 29, 2001 informed the Petitioner of the record address of AFSCME on file with the PELRB.

A pre-hearing conference was then scheduled and conducted on Wednesday, September 26, 2001 to allow the various parties to clarify their respective positions, explore the potential for settlement between the Petitioner and AFSCME, discern the several concerns of the parties in interest, and to solicit all parties' cooperation in facilitating the expeditious treatment of this matter.

PARTICIPATING REPRESENTATIVES

For the Association: Robert Morris, employee and signatory to the petition
Ralph Merchant, employee

For the District: Douglas T. Hatfield, Esquire
Patricia Trow Parent, Manager of Personnel Services

For AFSCME: Steven D. Lyons, NH Staff Representative, Council 93, AFSCME

MEMORANDUM AND ORDER

There are several reasons that the PELRB convenes a pre-hearing conference. Among those is the facilitation of proceedings and the encouragement of informal disposition of matters pending before it. When conducted in a timely fashion these conferences protect the rights of public employees and their employers, conserve the resources of the several interested parties to any action, and serve the economies of justice. The instant action involves a petition for certification that presents a confusing sequence of actions caused, in part, by the actions of the Petitioner.

The exploration of possible settlement between the Petitioner and AFSCME was unsuccessful. The issues revolve around the application of the statute and rules governing the certification and election of exclusive bargaining representatives. Specifically, the focus in this matter is the content of the petition for certification, the extent to which a petition conforms with the governing statutes and procedural rules for its submission, the effect a corrected petition filed outside the allowable time window has on the strict application of the procedural rules and the resulting effect on the rights of the public employees to be represented in collective bargaining by an agent of their own choice.

For its part, the District submitted a statement and participated in the pre-hearing conference to support its non-adversarial position that it does not want these proceedings to adversely affect its ability to negotiate a successor agreement to the present CBA by unreasonably delaying the orderly conduct of those negotiations. Otherwise, the District takes no position as with whom they negotiate.

For their part, AFSCME and the Petitioner have indicated that they agree as to certain relevant facts. These include:

1. AFSCME is the present duly certified exclusive bargaining representative for the same job positions for which the Petitioner seeks certification.
2. The Petitioner served an incomplete petition form on AFSCME on August 9, 2001 and that the Petitioner did not copy AFSCME with any later version of a Petition for Certification.
3. The next budget submission date for the public employer, Keene School District, is January 8, 2002.
4. The later version of the Petition for Certification was filed with the PELRB on August 14, 2001.
5. Neither version of the Petition for Certification named AFSCME as the existing exclusive bargaining representative for the positions listed in the petition.

The parties made reference to several documents at the pre-hearing and all present had seen copies of the CBA and the Petition for Certification. A copy of the certified mail receipt of service of the initial Petition for Certification, acknowledged by AFSCME, was provided to the AFSCME representative.

LENGTH OF HEARING

The time being set aside for this matter is one half day. If either party believes additional time is required, notice of the need for additional time shall be communicated to the PELRB no later than 4:00 P.M. on Monday, October 1, 2001.

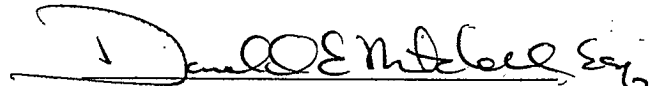
DECISION AND PRE-HEARING ORDER

1. This matter shall be heard by the Board on an expedited basis. AFSCME and the Petitioner have waived any notice period that might otherwise delay the conduct of the evidentiary hearing.
2. The party representatives shall inform each other by telephone, fax, or e-mail of the witnesses they intend to call and the exhibits they intend to present and shall forward a copy of their respective list, by e-mail or fax, to the PELRB no later than Wednesday, October 3, 2001.
3. The party representatives shall meet, or otherwise arrange, to pre-mark for identification purposes, and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, prior to the scheduled hearing. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
4. Any legal memorandum of law to be submitted shall be so no later than the closing of the record on the date of the hearing.

An expedited evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, October 4, 2001 **beginning at 10:00 A.M.**

So Ordered.

Signed this 27th day of September, 2001.


Donald E. Mitchell, Esq.
Hearing Officer