



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Keene Facilities Management Association

Petitioner

v.

AFSCME, Council 93, AFL-CIO

Respondent

and

Keene School District

Respondent

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Case No. M-0783

Decision No. 2001-100

### REPRESENTATIVES

#### Representing Keene Facilities Management Association:

Robert Morris, Keene Facilities Management Association

#### Representing AFSCME, Council #93:

Harriett Spencer, Staff Representative

#### Representing Keene School District:

Matthew Upton, Esq.

#### Also attending:

Steven Lyons, AFSCME, Council #93  
Ralph Merchant, Keene School District, SAU #29  
Eric LaClair Keene School District, SAU #29  
Sheila Conant, Keene School District, SAU #29

Ronald LaClair, Keene School District, SAU #29  
Pat Trow Parent, Manager Personnel Services

### BACKGROUND

The Keene Facilities Management Association (Association) submitted a Petition for Certification, challenging the incumbent bargaining agent, AFSCME, Council 93 (AFSCME) on August 7, 2001. This petition was returned to the signatory, Robert Morris, on that same date because it was incomplete, namely, it failed to indicate agreement or lack thereof in Item No. 6 and also failed to disclose whether a copy had been served on or provided to the incumbent union, AFSCME, as required on page 3. The record shows that AFSCME received and signed for this petition at its offices in Londonderry, New Hampshire, August 9, 2001.

Robert Morris, signatory for the Association, filed a "corrected" version of the petition on August 14, 2001, which remedied the Item No. 6 deficiency but left the "service" provisions of page 3 unchanged. Notice of that filing was duly given to the school district by letter of August 15, 2001 which caused Douglas Hatfield, Esquire, to enter his appearance on August 23, 2001. There is no evidence that Morris provided a copy of the "corrected" petition to AFSCME. On August 27, 2001, Council 93, AFSCME filed written objections to the Association's petition which included (1) failing to identify AFSCME Council 93 as the incumbent exclusive bargaining agent, (2) failing to identify that there is a collective bargaining agreement (CBA) in place until June 30, 2002, and (3) failing to meet the deadline for the filing of such petition which was August 12, 2001 in order to be within the requisite 150 to 210 days prior to the January 8 budget submission date.

As the result of the foregoing contested pleadings relating to the Petition for Certification, this matter was scheduled for a pre-hearing conference on September 26, 2001. The results of that conference are memorialized in Decision No. 2001-097 which is incorporated here by reference. That document also set this matter for hearing before the PELRB on October 4, 2001, the results of which are set forth below in the "Findings" portion of this document.

### FINDINGS OF FACT

At the PELRB hearing, all parties, inclusive of the Association, AFSCME and the District, stipulated as to the five following facts:

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.

During these proceedings, both the Association and AFSCME presented further arguments why they should prevail on their respective positions. The District reiterated that it had no position on which organization should be the certified bargaining agent, but asked that the matter be resolved as soon as possible so that bargaining might proceed soon enough to permit funding authority for the next fiscal year beginning simultaneously with the expiration of the current CBA.

### DECISION AND ORDER

We examine disputes such as this one on a case by case basis because the individualized circumstances seldom fall into a given category or fact pattern. It is clear from the administrative rules that we have discretion to consider those instances when a petition is filed less than 150 days prior to the budget submission dates. PUB 301.01 (b). However, we are admonished by those rules to reject "any petition filed so close to the budget submission date of the affected employer that the [PELRB] cannot conduct the election called for in the petition within 120 days of the budget submission date." Also PUB 301.01 (b). We are already inside that 120 day limit, notwithstanding the expedited hearing before the PELRB, less than ten (10) days after the pre-hearing conference.

We are ever-mindful of the purposes of RSA 273-A, as memorialized in Chapter 490:1 of the Laws of 1975, that our purpose is "to foster harmonious and cooperative relations between public employers and their employees" and the requirement that "public employers...negotiate in good faith...with employee organizations." While the 120 day limit of Rule PUB 301.01 speaks for itself, it is supported by the fact that neither the Association's petition nor its presentation before the PELRB was accompanied by a persuasive explanation why the petition could not have been filed sooner, i.e., within the 150-210 day window. In his letter/filing of October 2, 2001, Morris only said of AFSCME's objections that "the parameters mentioned in the letter were due to harmless error on my part...The original [and returned] copy was in on 8/7/01 and I believe that made our intentions clear."

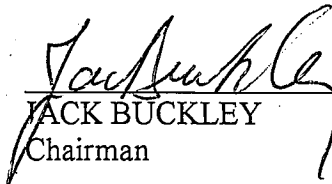
Notwithstanding the intentions of the Association, it was they, along with the District, who requested a continuance of the September 14, 2001 pre-hearing conference, on a date already inside the 120 day window of PUB 301.01 (b). It would be and is inappropriate for us, at this time, to deviate from a non-discretionary portion of our administrative rules and permit an election which, after requisite notice requirements which were not waived, would occur approximately 70 to 80 days before the budget submission date. In essence, the parties' next statutory cut-off date is that for invoking mediation, sixty (60) days before the budget submission date under RSA 273-A:12. The luxury of time to change bargaining agents is no longer

available; the voices of the members of the bargaining unit must next be heard when they speak on contract proposals presented to them for acceptance or rejection.

The pending Petition for Certification is DISMISSED; the certified bargaining agent and the public employer are directed to proceed to bargaining forthwith.

So ordered.

Signed this 18th day of October, 2001.

  
JACK BUCKLEY  
Chairman

By majority vote. Chairman Jack Buckley and Member E. Vincent Hall voting in the majority, Member Richard Roulx voting in the minority.