



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Jaffrey Rindge Support Staff Association,
NEA-New Hampshire

Petitioner

v.

Jaffrey Rindge Cooperative School District

Respondent

*
*
*
*
*
*
*
*
*
*
*

Case No: T-0419

Decision No. 2004-183

APPEARANCES

Representing the Jaffrey Rindge Support Staff Association, NEA-NH:

Mary E. Gaul, NEA-NH UniServ Director

Representing the Jaffrey Rindge Cooperative School District:

Michael S. Elwell, Esquire

BACKGROUND

The Jaffrey Rindge Support Staff Association, NEA-NH (hereinafter "the Association") filed a Petition for Certification with the Public Employee Labor Relations Board ("PELRB" or "Board") on April 26, 2004 seeking to establish a bargaining unit consisting of all full and part-time support staff personnel employed by the Jaffrey Rindge Cooperative School District (hereinafter "The District"). The District filed its exceptions to the Union's petition on May 11, 2004.

Hearings scheduled for June 4 and 28, 2004 were postponed at the request of the Association and with the assent of the District. A hearing was held on August 16, 2004 before the undersigned hearing officer at the offices of the Board in Concord, New Hampshire. Both parties were represented at the hearing, and had the opportunity to present witnesses for examination, to undertake cross-examination, and to offer exhibits into evidence. At the

conclusion of the hearing, the record was closed. Upon review of all filings submitted by the parties and consideration of all relevant evidence, the hearing officer determines the following:

FINDINGS OF FACT

1. The Jaffrey Rindge Cooperative School District ("the District") is a public employer within the meaning of RSA 273-A:1 X.
2. The Jaffrey Rindge Support Staff Association/NEA-New Hampshire (hereinafter "the Association") has petitioned to become the exclusive bargaining representative of a bargaining unit consisting of the following positions: All full and part-time support personnel including custodians, secretaries, maintenance and grounds personnel, lunch/recess monitors and assistants (also called associates, aides and paraprofessionals, including instructional, technology, clerical and library).
3. The Jaffrey-Rindge Education Association, Affiliated with NEA-New Hampshire, (hereinafter "the JREA") is the duly certified exclusive bargaining representative for all employees employed by the District, including the school nurse, and excluding administrators, supervisors, substitute teachers, teacher aides, secretaries, clerks and any other non-certified personnel.
4. The parties have stipulated to the inclusion and exclusion of all positions for the proposed bargaining unit but for the positions of instructional associates-aides/paraprofessionals and the library/media associates (hereinafter, all referred to as "instructional associates"). The District objects to the inclusion of the instructional associates within a bargaining unit which would be represented by the New Hampshire Education Association, based upon the contention that these employees are supervised by members of the JREA bargaining unit, which is also represented by the New Hampshire Education Association. The District cites the cases of *Appeal of Manchester Board of School Committee*, 129 N.H. 151 (1987) and *Support Staff Association of Moultonborough, NEA- New Hampshire v. Moultonborough School District*, PELRB Decision No. 97-077 (September 17, 1997) as authority in this regard.
5. The Association asserts that the instant case is distinguished from *Appeal of Manchester Board of School Committee* since it, as the petitioner, is not the JREA. Moreover, even if it were to be determined that the Association's affiliation with NEA-New Hampshire constitutes, as a matter of law, the same exclusive representative as the JREA, the Association avers that instructional associates are not supervised by teachers to such an extent as to preclude their also being represented by NEA-New Hampshire.
6. As referenced above, the JREA is currently affiliated with, and represented by, NEA-New Hampshire. The Association, as the instant petitioner, is similarly affiliated with, and represented by, NEA-New Hampshire. However, if certified, the exclusive representative for the support staff would be the Association and not the JREA.

7. According to the job description for "instructional associate (special education)," the position is "under the supervision of an appropriately certified professional in the area to which they are assigned" and evaluated by "teacher/supervisor." Performance responsibilities include:

- Assist[ing] in the preparation of teaching material and appropriate learning activities;
- Assist[ing] in maintaining the classroom routine in the teachers absence;
- Provid[ing] individualized instruction as designed by the teacher/supervisor;
- Utiliz[ing] a variety of methods appropriate to age and needs of student as directed by the teacher/supervisor and/or therapists;....
- To engage in other duties assisting the general population as directed by the teacher/supervisor and building administrator.

(District Exhibit No. 1.)

8. Instructional associates work closely and collaboratively with their assigned teacher in ensuring that the needs of the students are met. David Beauchamp, the District's Assistant Superintendent for Student Services/Director of Special Education, described the relationship during his testimony as being similar to a "marriage." JREA bargaining unit personnel do provide input into the hiring and non-renewal of instructional associates, but the final decision rests with school administration. JREA bargaining unit personnel do not have authority to discipline instructional associates, nor do they hire, set rates of pay, layoff, approve overtime or formally grant time off to instructional associates. If a teacher perceives a disciplinary issue with an instructional associate, he or she may speak with the instructional associate first. Otherwise, the teacher would typically report the matter to the school principal for appropriate action.

9. Teachers, including special education teachers and the Coordinator of Student Services, conduct performance evaluations of instructional associates assigned to their classroom. (District Exhibits Nos. 2 - 10). The administration delegates this responsibility to JREA bargaining unit personnel because they duals are in a better position to evaluate the work performance of these employees. Additionally, a teacher, at his or her discretion, may elect to collaboratively complete a "goals worksheet" with an instructional associate if the teacher determines that the work performance of the instructional associate has been unsatisfactory.

DECISION AND ORDER

JURISDICTION

The New Hampshire Public Employee Labor Relations Board is the administrative agency charged with determining the composition of public employee collective bargaining

units. RSA 273-A:8. The composition of each bargaining unit is evaluated on its own circumstances on a case-by-case basis. *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995).

SUMMARY OF DECISION

The petition is granted with the inclusion of instructional associates within the bargaining unit. To the extent that instructional associates are supervised by teachers, said supervision does not rise to the level of a significant exercise of discretion in order to otherwise preclude their being represented by an exclusive representative that also happens to have the same state and national affiliation as the exclusive representative of the teachers' bargaining unit.

DISCUSSION

Through the instant Petition for Certification, the Association seeks to certify a bargaining unit consisting of various support personnel within the District. As stipulated by the parties, the only outstanding issue concerns the so-called "instructional associates," whom the District maintains should not be included in the proposed bargaining unit. The District raises what essentially amounts to two arguments, namely (1) that the instructional associates are supervised, within the meaning of RSA 273-A:8 II, by members of the JREA bargaining unit, and (2) that because of such supervision, they are prohibited from being represented by NEA-New Hampshire, which already represents the JREA.

The formation of a bargaining unit is governed by the provisions of RSA 273-A:8, that portion of the law that establishes criteria for the PELRB to take into consideration when determining an appropriate bargaining unit. One such criteria, as provided in RSA 273-A:8 II, states that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." N.H. REV. STAT. ANN. 273-A:8 II (1999). In the case of *Appeal of Manchester Board of School Committee*, the New Hampshire Supreme Court held that "supervisory personnel [also] may not retain the same exclusive representative as the rank and file employees they supervise." *Appeal of Manchester Board of School Committee*, 129 N.H. 151, 153 (1987). Here, the District argues that the reverse should also apply, in that rank and file employees may not retain the same exclusive representative as the employees that supervise them. In this regard, the District maintains that the instructional associates must be severed from the Association's proposed bargaining unit because they are supervised by JREA bargaining unit personnel.

"In determining whether an employee exercises supervisory authority sufficient to exclude the employee from a bargaining unit, [the New Hampshire Supreme Court] consider[s] several factors, including the employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority." *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999)(citing *Appeal of East Derry Fire Precinct*, 137 N.H. 607, 610 (1993)). See also *Appeal of University System of New Hampshire*, 131 N.H. 368, 376 (1988). While the instant record reflects that teachers exercise a certain degree of supervision over instructional associates, I find that they do not possess "supervisory authority involving the significant exercise of discretion" to otherwise require the exclusion of instructional associates from the instant bargaining unit.

The fact that the term "Teacher/Supervisor" is referenced within both the job description (District Exhibit No. 1) and performance evaluation forms (District Exhibits Nos. 2 - 10) for the position of instructional associate does not, in and of itself, endow teachers with "supervisory authority involving the significant exercise of discretion." On the contrary, the record reflects that teachers, including special education teachers, have no genuine disciplinary authority over instructional associates, nor are they involved in the scheduling of work or the formal granting of time off for instructional associates. While JREA bargaining unit staff do conduct performance evaluations of instructional associates, and this information is routinely considered by management/non-bargaining unit personnel in terms of assessing whether an instructional associate's employment should be renewed, there is no evidence that said reviews are given any further weight in the granting of pay raises or other terms of employment.

It also appears that in directing instructional associates in their interaction with students, teachers are governed by professional norms that restrict their discretionary authority. The job description for instructional associates specifically provides, *inter alia*, that they are "[u]tilize...a variety of methods appropriate to age and needs of the student as directed by the teacher/supervisor and/or therapist [and] provide...individualized instruction as designed by the teacher/supervisor." (District Exhibit No. 1). This would indicate that the teacher determines, based upon his or her professional knowledge and training, appropriate teaching methods for a particular student and that the instructional associate serves as a conduit for the application of this knowledge and training. Indeed, testimonial evidence established that teachers and instructional associates work in a collaborative fashion, as in a marriage or as "a team," for the benefit of the students. In this regard, a teacher's discretionary decision to prepare a goals worksheet with an instructional associate is more reflective of the collaborative approach in the classroom than strict supervisory oversight. This information further erodes any significant concern for potential conflicts arising because of differing duties between these two groups of employees.

It is understood that the Coordinator of Student Services is also included within the JREA bargaining unit, but the evidence submitted does not establish a greater level of supervisory authority for this position than is otherwise possessed by teachers and other employees in the unit.

Since, as discussed above, the instructional aides are not "supervised" by members of the JREA within the meaning of RSA 273-A:8 II, the fact that the respective bargaining units happen to both be affiliated with NEA-New Hampshire is of no effect. Therefore, the issue of whether or not the Association, in its affiliation with NEA-New Hampshire, constitutes the "same exclusive representative" as the JREA under *Appeal of Manchester Board of School Committee and Support Staff Association of Moultonborough, NEA- New Hampshire v. Moultonborough School District* need not be addressed. The Association's petition is hereby granted with a bargaining unit consisting of all full-time and part-time custodians, including head custodian, maintenance and grounds personnel, secretaries and clerical aides, Information Technology Technician, instructional associates/paraprofessionals and library/media associates, and excluding the Director of Maintenance and Grounds and non-professional employees whose worksite is at the SAU #37 Central Office. In specific reference to the Association's Request for

Findings of Fact and Rulings of Law, paragraphs 1 through 7 are granted and the scheduling of a representation election is directed to proceed forthwith.

So ordered.

Signed this 22nd day of November, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Mary E. Gaul

Michael S. Elwell, Esquire