



**State of New Hampshire**  
Public Employee Labor Relations Board

**Manchester Educational Support Personnel Association/NEA-NH**

**and**

**Manchester School District**

**Case No. E-0199-1**  
**Decision No. 2016-198**

**Appearances:**

Michelle Couture, UniServ Director, NEA-NH, Manchester, New Hampshire, for the Manchester Educational Support Personnel Association/NEA-NH

James A. O'Shaughnessy, Esq., Drummond/Woodsum, Manchester, New Hampshire, for the Manchester School District

**Background:**

On May 2, 2016, the Manchester Educational Support Personnel Association/NEA-NH (Association or MESPA) filed a petition for modification seeking to update the description of the existing bargaining unit to reflect the changes agreed upon during the negotiations between the Association and the Manchester School District (District). See PELRB Certification and Order to Negotiate, Case No. M-0607 (May 18, 1989). Among other things, the Association seeks to add the position of the Human Resources (HR) Representative to the bargaining unit. The District objects to the inclusion of the HR Representative position on the ground that this position is confidential within the meaning of RSA 272-A:1, IX (c). The parties are in agreement as to all other proposed changes. See Modification Petition.

A hearing on the District's objection was conducted on June 16, 2016 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties filed post-hearing briefs on July 1, 2016; and the decision is as follows.

### **Findings of Fact**

1. The District is a public employer within the meaning of RSA 273-A:I, X.
2. Pursuant to the PELRB certification, the Association is the certified exclusive representative for "all regular full-time and regular part-time secretaries, clerk-typists, account clerks, accountants, attendance officers, media equipment, technicians, financial unit supervisors, information support specialists, cashiers, transportation coordinators, storekeeper/maintenance personnel and parent involvement specialists." See PELRB Certification and Order to Negotiate, Case No. M-0607 (May 18, 1989). The positions of Secretary to Superintendent and Secretary to Assistant Superintendent are excluded from the bargaining unit. *Id.* This bargaining unit has never been modified and currently contains approximately 60 District employees.
3. The District and the Association are parties to a collective bargaining agreement (CBA), effective from September 1, 2015 to June 30, 2018. Article 4 of the CBA contains a four-level grievance procedure which provides in part as follows:

The purpose of the procedure is to secure, at the lowest possible administrative level, equitable solutions to problems which may, from time to time, arise affecting the welfare or working conditions of any bargaining unit member having a grievance. Both parties agree that the proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure ...

Nothing herein contained will be construed as limiting the right of any bargaining unit member having a grievance to discuss the matter informally with any appropriate supervisor and to have the grievance adjusted without the intervention of the Association, provided that such adjustment is not inconsistent with the terms of the Agreement. The Association shall have the right to communicate its concerns to the appropriate administrator, relative to any interested party; however, this right shall not extend to being present at any meeting, unless the grievant wants the Association

to be there. Any adjustment reached without the presence of a designated representative of the Association shall not be precedential in any way...

...

Since it is anticipated that nearly all grievances can be resolved informally at level one, it is important that the complaint be processed as rapidly as possible...

...

All documents, communications and records dealing with the processing of a grievance will be filed separately from the personnel files of the participants...

See Joint Exhibit F.

4. The District employs approximately 2500 employees and has 6 bargaining units, including 3 units represented by or affiliated with the NEA.

5. The position of Administrative Services Manager has been treated by the parties as included in the bargaining unit since 1989. See Stipulated Facts at a. See also Joint Exhibit F (CBA Article 2).

6. Joanne Roy served in the position of Administrative Services Manager from 2012 until her retirement in July, 2015. Prior to her employment, Paula Wakefield (who later became the HR Director) served in this position for a number of years.

7. The Administrative Services Assistant did not have access to disciplinary investigations, harassment complaints or grievance decision-making. She had access to personnel files and to grievance decisions, if they had been placed in personnel files.

8. Pamela Hogan has been the District's HR Director since 2014. She became more directly involved in employee relations matters than previous HR Directors, including gathering and preparing information necessary for negotiations and preparation of proposals and other documents for final approval by the Superintendent. Director Hogan's duties include assisting the Superintendent with conducting disciplinary investigations, processing grievances, drafting

employment termination letters, preparing negotiations proposals, and researching personnel and labor-related matters. The HR Director attends negotiations and grievance meetings, receives grievances and researches them, gives recommendations to the Superintendent and the Business Administrator, and drafts responses to grievances. She discusses the facts of grievances and disciplinary matters with the Superintendent and assists with drafting documents, including negotiations proposals and disciplinary and grievance decisions.

9. HR Director Hogan is a member of the District negotiating team and her role in negotiations includes conducting necessary research and providing information and strategy-related advice.

10. In the past, Director Hogan assigned pieces of research and data collection to the Administrative Services Manager but she did not assign the drafting of the responses because she believed that the responses were confidential and the Administrative Services Manager position was in the bargaining unit.

11. Although the authority to discipline employees lies with the Superintendent, the Assistant Superintendent, and Principals, the HR Director can discipline a District employee when the Superintendent or Assistant Superintendent delegates this authority to her.

12. The HR Department, along with other departments, creates personnel-related policy drafts and presents them to the Superintendent for approval. The ultimate decision on personnel-related policies lies with the Board of School Committee.

13. As a new HR Director, Ms. Hogan's main concern became the volume of work and staff shortage, especially in view of the large size of the District. Because Director Hogan could not hire additional staff due to budget constraints, she decided to reorganize the HR department in order to be able to manage the volume of work appropriately, efficiently, and in a timely manner. The objective of reorganization was to eliminate the position of Administrative

Services Manager and create two new positions, including the position of the HR Representative. The HR Representative position was intended, among other things, to assist the HR Director during labor negotiations and in the processing of grievances and to provide the HR Director daily clerical support akin to the support provided to the Superintendent by her executive secretary.

14. During the negotiations on the 2015-18 CBA, the parties discussed, among other things, the growth of the student population, the reorganization of the HR Department, and various positions, including the HR Representative position. The Association was aware that the District intended the HR Representative position to be a confidential, non-bargaining unit position.

15. On June 25, 2015, HR Director Hogan sent a draft of the job description for the HR Representative position with the following communication to the Association UniServe Director and Chief Negotiator Michelle Couture:

Attached is the job description we will use to recruit for the opening occurring due to Joanne Roy's retirement at the end of July. Currently the position is an Administrative Services Manager and is a MESPA-union affiliated position. Due to the changing demands of the office which is requiring this position to be involved in highly confidential matters, it should no longer be affiliated under MESPA.

The position is changing to meet the greater demands of this office. As stated prior, the position is much more involved in the confidential matters of the office including negotiation matters (being privy to some aspects of negotiations) and now falls under the labor nexus...

See Association Exhibit B.

16. At the time the job description for the HR Representative position was drafted, there was no employee hired for this position; and Joanne Roy was still working as an Administrative Services Manager but was about to retire. According to the Association President, the "HR Representative" was intended to be a new position.

17. During the July 13, 2015 meeting, the Board of School Committee discussed the approval of "the amended job description and title for the position of HR Representative due to a reorganization within the department." The proposed HR reorganization chart was presented to the Board of School Committee along with the proposed job description for the position of HR Representative. The chart showed that the reorganized HR Department would contain four employees (HR Representative, HR Legal Assistant, HR Coordinator, and Benefits Coordinator) in addition to the HR Director, that the HR Representative will report directly to the HR Director, and that the funding for the HR Representative position would come from the former Administrative Services Manager position. See Association Exhibit E.

18. HR Legal Assistant, HR Coordinator and HR Benefits Coordinator are not in the MESPA bargaining unit.

19. The District eliminated the Administrative Services Manager position and created a new position of HR Representative. See Stipulated Facts at c.

20. The opening for the HR Representative position was posted on September 16, 2015 and contained the following job description:

... Specific Core Function:

The Human Resources Representative is a position that focuses on a combination of assigned duties requiring ability to work independently and prioritize tasks daily. Under the supervision of the Director of Human Resources performs specific confidential tasks relating to employee information, union plans/reports and documents and may help draft same. This position provides administrative and HR support to the staff members in the Human Resources Department. Must be able to maintain a high level of effective employee, applicant and vendor customer service. This position requires proper judgment and polite and professional decorum and interaction. Assists the Director during periods of union negotiation relative to documents and reports. Manages the process for teacher Alt. Plans and performs tasks associated with the State DOE EIS system. Manages files and correspondence [sic] relating to the grievance process for employees [sic].

Responsibilities of the Position:

- Verify/track educator certification and HQT status and Coordinate educator alternative certification plans
- Process course reimbursement requests (college credit courses)
- Database maintenance (District and NH Dept of Ed EIS System)
- Process employment applications and respond to applicant inquiries
- Assist the Director with ADA Plan forms, notification and tracking
- Prepare Local, State, Federal Surveys/Reports as requested
- May be required to respond to NH Employment Security requests for employer response
- Manage the substitute teacher/paraprofessional application and lists and coordinate with the vendor
- Update the human resources page of the Manchester School District website
- Generate and complete letters and memos as needed of often highly confidential nature
- Support/backup to other department staff and functions including orders and record maintenance
- Manages Exit Interview Process and Analysis
- Assists the Director with documents required during negotiation sessions with unions and for grievances
- Attends meetings, conference, workshops and training sessions and reviews publications and audio-visual materials to become and remain current on the principles, practices and new developments in assigned work areas
- Responds to citizens' questions and comments in a courteous and timely manner.
- Communicates and coordinates regularly with appropriate others to maximize the effectiveness and efficiency of interdepartmental operations and activities...

See Association Exhibit c.

21. Kirsten Hudson is currently employed as the HR Representative. She was hired after the end of the 2015 contract negotiations and has been employed as the HR Representative for less than a year.

22. As part of her responsibilities, Ms. Hudson is reorganizing personnel files, including grievance files, by converting them into electronic format.

23. Among other things, the HR Department is responsible for conducting disciplinary investigations. The HR Legal Associate conducts initial investigations and prepares reports which are submitted to the HR Director and the Superintendent for discussion as to the possible action. The HR Representative is not present during these discussions. The HR

Representative helps the Legal Associate to prepare the report and, after the decision is made, assists in drafting the decision letter. The HR Representative discusses the facts of the case with the Legal Associate. For example, when the Legal Associate conducted a disciplinary investigation concerning allegations of document falsification by teachers, she had to explain the matter to the HR Representative in order to allow her to retrieve the relevant data. The HR Representative was not involved in decision-making in that case but she was privy to the District strategy, information, and the decision.

24. The HR Director plans to assign drafting of grievance responses to the HR Representative. She will give the HR Representative the original draft for editing and putting it on a letter-head. The HR Representative will have access to personnel files.

25. Contract negotiations usually require a lot of drafting, including drafting of many bargaining proposals and modifications to proposals. The HR Representative will assist the HR Director in drafting bargaining proposals and conducting research, including research of grievance files, needed for negotiations.

26. The HR Director believes that, in order to perform her duties, the HR Representative must be privy to management's grievance and negotiations related strategies.

27. Assistants and associate staff members are usually not present during the labor negotiations or during grievance meetings.

28. The HR Representative will not be involved in official decision-making meetings but she will be privy to conversations involving personnel-related matters and will attend HR staff meetings at which personnel matters, including employee misconduct and labor-related document drafting issues, will be discussed.



## Decision and Order

### Decision Summary

The HR Representative is a confidential employee within the meaning of RSA 273-A:1, IX (c). Accordingly, the Association's request to add this position to the existing bargaining unit is denied. The request to update the description of the bargaining unit in accordance with the parties' agreement is granted.

### Jurisdiction

The PELRB has jurisdiction over all petitions to determine and modify bargaining units pursuant to RSA 273-A:8 and Pub 302.05.

### Discussion

The legislature has vested the PELRB with primary and exclusive authority to determine the composition of bargaining units. See RSA 273-A:8, I.<sup>1</sup> See also *Prof. Fire Fighters of Wolfeboro v. Town of Wolfeboro*, 164 N.H. 18, 22 (2012); *Appeal of the University System of N.H.*, 120 N.H. 853, 854 (1980). Modifications of existing bargaining units are governed by Pub 302.05, which provides in relevant part as follows:

(a) Where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed, or where a prior unit recognized under the provisions of RSA 273-A:1 is alleged to be incorrect to the degree of warranting modification in the composition of the bargaining unit, the public employer, or the exclusive representative, or other employee organization if the provisions of section (d) are met, may file a petition for modification of bargaining unit.

(b) A petition shall be denied if:

(1) The question is a matter amenable to settlement through the election process; or

(2) The petition attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed, actually

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<sup>1</sup> "The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10..." RSA 273-A:8, I.

changed prior to negotiations on the collective bargaining agreement presently in force.

Pub 302.05. The language of Pub 302.05 leaves the PELRB discretion in deciding whether or not to grant petitions to modify. *Appeal of Bow School District*, 134 N.H. 64, 72-73.

In this case, the Association seeks, among other things, to add the position of HR Representative to the existing bargaining unit. The parties agree that the position of HR Representative is a newly-created position. "Creation of new positions, or restructuring of existing positions, is a change in circumstances that may warrant modification of an existing bargaining unit." *Windham School District, SAU #95 and Windham Education Association, Affiliated with NHEA/NEA*, PELRB Decision No. 2015-148 (June 30, 2015). I find that there is sufficient change in circumstances in this case to justify a petition for modification.

The District objects to the inclusion of the HR Representative in the bargaining unit on the ground that the HR Representative is a confidential employee within the meaning of RSA 272-A:1, IX (c).<sup>2</sup> RSA 273-A:1, IX (c) defines a "public employee" as "any person employed by a public employer except ... [p]ersons whose duties imply a confidential relationship to the public employer." Confidential employees are "those employees who have *access* to confidential information *with respect to labor relations, negotiations, significant personnel decisions and the like*." *Appeal of Town of Moultonborough*, 164 N.H. 257, 262 (2012) (emphasis added). Although, there is "no set minimum or maximum number of employees who may be deemed confidential"; *Appeal of City of Laconia*, 135 N.H. 421, 424 (1992); the number of such employees in any department "must be large enough to enable the labor relations activities of the Department and the personnel activities of the Department to be carried on, but must not be so numerous as to deny employees who are entitled to the rights and benefits of R.S.A. 273-A those

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<sup>2</sup> The District does not dispute that there is a community of interest between this position and the rest of the employees in the bargaining unit as required under RSA 273-A:8, I and Pub 302.02.

rights merely on the assertion that they might somehow be connected with activities related to labor relations.” See *State of New Hampshire, Department of Revenue Administration v. State Employees' Association*, PELRB Decision No. 78001.

In *Appeal of City of Laconia*, the Supreme Court concluded that the administrative secretary was a confidential employee because she “was privy to the personnel director’s personal thoughts, strategies, and notes about the collective bargaining process. Moreover, the administrative secretary opened all inter-departmental communications, including those involving labor negotiation strategies between the city manager and the personnel director.” *Appeal of City of Laconia*, supra, 135 N.H. at 423. Similarly, in *Appeal of Town of Newport*, 140 N.H. 343, 347-48 (1995), the Supreme Court held that the department secretary was a confidential employee because, among other things, the director of public works, considered her to be his “administrative assistant”; she kept the personnel records, was privy to any disciplinary actions taken, and attended staff meetings at which confidential matters were discussed; and the town manager testified that she will be gathering “confidential information” and “putting strategies together to pass up the line” to his office in future labor relations and negotiations. See also *Keene State College Administrative Staff Association, NEA-NH and Keene State College*, PELRB Decision No. 2016-097; *Hooksett Police Supervisors, NEPBA Local 38 and Town of Hooksett*, PELRB Decision No. 2010-182; *Teamsters Local 633 of NH/Newmarket Public Works Employees and Town of Newmarket*, 2008-127.

In contrast, in *I.U.O.E. Local 08 v. Town of Pembroke*, the public works secretary was included in the bargaining unit over the town’s objection that she was a confidential employee. See PELRB Decision No. 2006-205. The evidence in *Pembroke* was insufficient to prove that the secretary was involved with personnel or other confidential labor relations matter in any meaningful way. *Id.* See also *Hampstead Police Union, NEPBA Local 37 and Town of*

*Hampstead*, PELRB Decision No. 2008-071 (finding that dispatcher-clerk was not confidential employee); *Bethlehem Educational Support Personnel, NEA-New Hampshire and Bethlehem School District*, PELRB Decision No. 2010-054 (finding that evidence was insufficient to prove that administrative assistant and secretary were confidential employees). Likewise, in *Appeal of Town of Moultonborough*, supra, 164 N.H. at 263-64, the Supreme Court agreed with the PELRB that the executive assistant to the police chief was not a confidential employee within the meaning of RSA 273-A:1, IX. Id, stating that

... the executive assistant does not maintain personnel files and only the chief has a key to the locked cabinet containing personnel files. Additionally, she does not attend staff meetings or non-public meetings between the chief and board of selectmen. Moreover, although she receives all of the department mail, she does not open mail marked 'confidential.'

*Appeal of Town of Moultonborough*, supra, 164 N.H. at 263-64.

In this case, the record shows that the position of HR Representative is a new position that was created to provide clerical assistance to the HR Director, who, among other things, is responsible for processing disciplinary investigations and union grievances, drafting bargaining proposals, disciplinary decisions, and grievance responses, and providing strategic advice and recommendations to the Superintendent as to the labor negotiations, grievances, and other significant personnel decisions.<sup>3</sup> Based on the job description, the HR Representative "performs specific confidential tasks relating to employee information, union plans/reports and documents and may help draft same"; generates and completes letters and memos of confidential nature; assists the HR Director "during periods of union negotiation relative to documents and reports"; and manages files and correspondence relating to the grievance process. In addition, akin to

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<sup>3</sup> As the HR Representative is a newly-created position, I find the evidence as to the duties and responsibilities of the Administrative Services Manager position not relevant. Similarly, any evidence concerning the allegation that, by creating the HR Representative position, the District unilaterally removed bargaining unit work from the MESPA bargaining unit is not relevant because this case does not involve an unfair labor practice complaint.

secretaries/administrative assistants in *Appeal of Town of Newport*, *Appeal of City of Laconia*, *Keene State*, *Hooksett*, and *Newmarket*, the HR representative is privy to many aspect of HR Department operations, has significant access to confidential personnel information, including the grievance and disciplinary files and is privy to the HR Director's thoughts concerning negotiations strategies and grievances. As the parties' CBA requires that the grievances be processed "as rapidly as possible" and be kept confidential, and in view of the large size of the District, in contrast with small size of the District HR Department, the HR Director's testimony that the HR Representative's access to confidential labor material is necessary for efficient operation of the Department appears credible. The record shows that placing limitations on the scope or nature of the HR Representative's work would disrupt the efficient and timely operation of the HR Department. Like in *Laconia*, it would be unreasonable to require the HR Director to "to work under circumstances in which [she] must keep secrets" from the HR Representative regarding a significant part of her work. See *Appeal of City of Laconia*, supra, 135 N.H. at 423.

Based on the foregoing, I find that the HR Representative in this case has access to confidential information with respect to significant personnel decision and labor relations. Therefore, the HR Representative is a person whose duties imply a confidential relationship to the public employer within the meaning of RSA 273-A:1, IX (c) and *Appeal of City of Laconia*, id.

Accordingly, the District's objection to the inclusion of the HR Representative position in the bargaining unit is sustained and Association's request to add this position to the bargaining unit is denied. The petition for modification is otherwise granted based upon the parties' agreement and the bargaining unit description is modified as follows:

**Unit:** All regular full time and regular part time employees working seventeen (17) hours or more per week for the Manchester School District in the classifications of Accountant I, Accounting Technician, Administrative

Assistant II, Administrative Assistant III, Administrative Services Manager I, Athletic Operations Assistant, Computer Operator II, Hardware Services Technician, Information Support Systems Assistant, Information Systems Support Specialist, MCTV Operations Specialist, Micro Computing/Networking Manager, Network Services Coordinator, Operations Assistant, Payroll Coordinator, Print Shop Manager, School Equipment Operations Manager, and School Video Technician.

**Excluded:** Secretary to the Superintendent, Secretaries to the Assistant Superintendents, Secretary to the Business Administrator, Benefits Coordinator, Community Relations Facilitator, Payroll Supervisor, Warehouse Coordinator, and Human Resources Representative.

A unit modification order shall issue as appropriate.

So ordered.

Date: 9/15/2016

  
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