



NH Supreme Court affirmed this decision on April 24, 1997, Slip Opinion No. 96-661, 141 NH 768 (1997).

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA SCHOOL CUSTODIAN UNION,  
AFSCME COUNCIL #93, LOCAL 365

Complainant

v.

CITY OF NASHUA BOARD OF  
EDUCATION

Respondent

CASE NO. A-0424:16

DECISION NO. 95-52

APPEARANCES

Representing Nashua School Custodians:

Vincent Wenners, Esq.

Representing City of Nashua:

Mark J. Bennett, Esq.

Also appearing:

Charles A. Reynolds  
Jane Bangert, Nashua Board of Education  
Tim Corwin, Nashua Board of Education  
James Anderson, AFSCME  
Michael Schultz, AFSCME

BACKGROUND

The Nashua School Custodian Union filed unfair labor practice charges against the City of Nashua, Board of Education on March 24, 1995. The Nashua Board of Education responded on April 7, 1995, filing a Motion to Dismiss the charges for failure to state a cause of action. The motion was held in abeyance and the matter was heard before the PELRB on April 27, 1995.

FINDINGS OF FACT

1. The City of Nashua, Board of Education (School Board)

is a public employer of educators and support personnel within the meaning of RSA 273-A:1 X.

2. The Nashua School Custodian Union, AFSCME Council 93, Local 365 (Union) is the duly certified bargaining agent for "all full-time custodians and janitors" employed by the School Board within the meaning of RSA 273-A:1 IX.
3. The School Board and the Union are parties to a collective bargaining agreement for the period, July 1, 1991, through June 30, 1992. Negotiations were begun based on the expired contract and negotiations are now at an impasse.
4. The School Board employs approximately sixty full-time school custodians who are paid the negotiated wage rate of between \$9 and \$10 an hour and who receive fringe benefits such as insurance, sick and vacation days.
5. The School Board has announced that it will eliminate twenty-eight full-time custodial positions as a cost cutting measure on June 30, 1995.
6. On July 1, 1995, it will hire thirty-one part-time school custodians to work twenty hours per week for \$7 an hour and who will receive no benefits. There are no changes in the duties to be performed but the new positions will not be bargaining unit positions, since the certification for the custodians' bargaining unit specifically excludes part-time workers.
7. The School Board has invited the full-time custodians who will be laid off to apply for the new part-time custodian positions though there is no promise of hiring.
8. Timothy Corwin, Business Administrator for the Nashua School District, testified that cost reductions were necessary because of a recently voted 2.9 percent budget growth cap and that his first obligation under the School Board approved organizational plan, (School Board Exhibit No. 1), is to maximize instructional programs. Mr Corwin indicated that seniority was a consideration in the choice of those to be laid off but that the impact on the Union was not a factor considered when it was decided to lay off full-time custodians, then it was agreed to hire them into part-time positions and put them on the recall list for full-time positions as they may open.

DECISION AND ORDER

The Nashua School Board has voted to alter the organizational structure of its custodial staff decreasing the number of full-time custodians it employs nearly by half and then adding thirty-one part-time custodians. The School Board urges dismissal of these charges of unfair labor practices stating that their actions constitute managerial prerogative as defined in RSA 273-A:1 XI. While it is true that management is free to reorganize, the methods used to implement the reorganization are of interest to this Board when they greatly change terms and conditions of employment and so give rise to charges of unfair labor practices as in the present case. The Motion to Dismiss is denied.

Under the plan as proposed, the part-time custodians will be paid \$7 an hour with no benefits for twenty hours of work each week. The full-time custodians are now paid between \$9 and \$10 per hour. The new custodians will perform unit work but they will be ineligible for union membership because the unit certification limits membership to full-time employees. No petition for certification of a bargaining unit of part-time custodians has been filed as yet. The School Board has informed the full-time custodians who are to be laid off that they may apply for one of the thirty-one new positions at lower wages and compensation. The offer is statutorily impermissible because it offers these new part-time employees unit work at a rate different from that which has been bargained.

The position of part-time custodian must be compensated at the present hourly wage for full-time custodians when the part-time custodians are performing identical job functions. Certain insurance benefits are not available to part-time workers. However, vacation, sick leave and other such benefits shall be pro-rated and paid accordingly.

So ordered

Signed this 21st day of July, 1995.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.  
Members E. Vincent Hall and Richard Roulx present and voting.