



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
LOCAL 2986

Petitioner

v.

TOWN OF MERRIMACK, N.H.

Respondent

CASE NO. A-0459:9

DECISION NO. 89-62

#### DECISION AND ORDER

Pursuant to notification by representative for Local 2986 AFSCME that as a result of actions taken by the Town of Merrimack at the factfinding session held September 13, 1989 withdrawing the tentatively agreed work schedule of four (4) ten (10) hour workdays, Local 2986 withdraws its charge of unfair labor practice on the unilateral implementation of said work schedule.

Therefore, the request to withdraw is accepted and the Cease and Desist Order issued to the Town of Merrimack on August 9, 1989 is hereby lifted.

Signed this 20th day of September, 1989.

  
EDWARD J. HASELTINE, Chairman

By unanimous vote. Edward J. Haseltine, Chairman presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting. Also present, Executive Director, Evelyn C. LeBrun.



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE :

Petitioner :

v. :

HOPKINTON SCHOOL DISTRICT :

Respondent :

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CASE NO. M-0614

DECISION NO. 89-62

#### APPEARANCES

Representing the Petitioner, Local 633 Teamsters of N.H.:

Thomas D. Noonan, Business Agent

Representing the Respondent, Hopkinton School District.:

Thomas Flygare, Esq., Counsel

Also appearing:

Cynthia Mowles, Superintendent

Carol A. Curtis, Principal

Joseph Lucas, Night Custodian

Michael Trojano, Business Administrator

Heidi Knipe, Hopkinton School District

#### BACKGROUND

On June 20, 1989, Thomas D. Noonan, Business Agent, on behalf of Teamsters Local 633 and custodians in the Hopkinton School District, petitioned for certification of a proposed bargaining unit consisting of all regular full-time and regular part-time custodians. The petition was accompanied with the required number of individual signature cards from employees wishing to be represented by Local 633 for the purpose of collective bargaining and settlement of grievances.

On July 6, 1989, Michael J. Trojano, Business Administrator filed exception to the proposed unit on the basis that only eight (8) full-time and one (1) part-time custodians were eligible for inclusion in a unit; one (1) full-time position, he stated, should be excluded as the position was occupied by a special education student and another full-time position was held by the night supervisor who performed supervisory duties. Exclusion of these two positions would result in insufficient number of employees (minimum of ten) to meet the requirements of 273-A. He added that the custodians worked in different buildings and therefore did not meet the community of interest requirement under law.

On June 20, 1989, Thomas J. Flygare, Esq. representing the District expanded on the objection presented by the Business Administrator; i.e., the custodians, night supervisor, special needs employee and the lack of community of interest.

Unit determination hearing was held in the Board's office in Concord on August 8, 1989 with all parties represented.

The District contended that the night custodian was a supervisor and should be excluded from the unit under the provisions of RSA 273-A:8, II. Witness Joseph Lucas, the custodian in question, testified that he did regular custodial work at night and was given his assignment by the School Principal or the Building and Grounds Supervisor; he performed maintenance work and exercised little or no supervisory authority. He stated he was paid a premium over other custodians but had no authority to hire or fire; he did advise the supervisor of unsatisfactory work by other custodians but performed physical custodial work on a daily basis.

Witness Michael Trojano testified regarding the special needs student employed as a custodian on a temporary basis as part of a rehabilitation effort and was paid in part by subsidized funds, Department of Education, the requirement for regularly scheduled part-time custodians.

Witness Carol Curtis, Principal of the High School, offered testimony regarding reports, meetings with Lucas and his relationship to other custodians and his consideration of requested and offered recommendations relative to other custodians, and monthly meetings held by him with custodians, but agreed that he did physical work regularly along with other custodians.

#### FINDINGS OF FACT


After considering the written and oral testimony, the Board finds as follows:

1. The position of night custodian held by Joseph Lucas does not meet the requirement for exclusion from the unit. Although it has certain supervisory responsibilities, the degree of supervision and discretion does not merit exclusion. Mr. Lucas on a daily basis performs all the same functions as all other custodians.
2. The position of custodian occupied by the special needs student is a valid position and should be included in the unit. The occupant of the position does not qualify for its exclusion, the duties required of the position are the influencing factor.
3. The custodians in the District do share a community of interest; they all work for the District and are paid by the same employer, they are all engaged in the same craft of work even though work in different buildings and they do meet as a group monthly.

DECISION AND ORDER

- A. The petition for a bargaining unit submitted by Local 633, Teamsters of N. H. is hereby GRANTED.
- B. The unit will consist of all full-time and regular part-time custodians employed by the Hopkinton School District.
- C. An election will be held by PELRB under its authority, RSA 273-A as expeditiously as possible.

Signed this 22nd day of September, 1989.

  
EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Also present and voting, Members Seymour Osman and Daniel Toomey. Present, Executive Director Evelyn C. LeBrun