



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 298 MANCHESTER	:	
SCHOOL DEPARTMENT	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. A-0455:22
	:	
MANCHESTER SCHOOL DISTRICT	:	DECISION 95-27
	:	
Respondent	:	

APPEARANCES

Representing AFSCME Local 298:

James C. Anderson, Staff Representative

Representing Manchester School District:

David Hodgen, Chief Negotiator

Also appearing:

Foad Afshar
Mary Vigue
Charlene Roy, AFSCME, Local 298
Brian Mitchell, AFSCME, Local 298

BACKGROUND

AFSCME Local 298 filed a petition to modify the bargaining unit made up of all teacher aides (now called educational assistants) to include tutors on September 7, 1994. The City of Manchester School District filed its exceptions on September 22, 1994. The matter was scheduled and then continued on November 30, 1994. The case was heard before the undersigned hearing officer on January 11 and May 1, 1995 after which the record was closed.

FINDINGS OF FACT

1. The Manchester School District (School District) is a public employer of educational personnel within the meaning of RSA 273-A:1 IX.
2. AFSCME Local 298 (Union) is the duly certified bargaining agent for all educational assistants referred to in the certification documents dated August 17, 1979, as "all Manchester, New Hampshire teacher aides." At the time of the election, a question developed, but was not answered, regarding the intent to include in the bargaining unit a small number of interpreter tutors (approximately three) who assisted deaf students.
3. The last contract executed by the parties extended from January 1, 1989 through December 31, 1991. It was signed in 1992 after which the parties commenced negotiations for a new contract.
4. Approximately 60 tutors are now employed by the School District. According to Foad Afshar, assistant director of special education, the jobs they perform are not comparable to those of the interpreter tutors of the past. Since the last contract was negotiated, the job title of tutor has proliferated in response to federal legislation. Chapter I and II tutors, as well as many categories of special education tutors, now work within the School District under varying conditions of employment.
5. Educational assistants are considered regular personnel who receive benefits and are hired from year to year though they are not employed during the summer. Generally, they are non-degreed personnel who work assisting teachers with classes of students. They are paid approximately \$7-8.00 an hour for working a certain number of hours each day.
6. Tutors are degreed personnel who are certified by the New Hampshire Department of Education. Chapter I and Chapter II tutors are hired to work from approximately October through June. They rarely return to work within the District for a second year. Generally, they work with one student at a time for an hour or more a day to overcome a subject matter deficiency. Special education tutors have less attachment to their employment than Chapter I and II tutors in that

that interfere with learning. They work varying hours depending on the needs of the student and they may be fulfilling more than one contract at a time. Special education tutors and Chapter I and Chapter II tutors are paid a base rate of \$10.50 per hour. They receive no fringe benefits.

7. Some special education tutors are hired to work in successive school years, but this is not the norm. They are told not to expect re-employment and their records are not kept with the records of regular personnel. The School District will not cooperate with a tutor's using anticipated income from employment as a tutor to qualify for a mortgage or for other bank credit. Both categories of tutor are told that they cannot expect re-employment. Testimony and documentary evidence suggest that re-employment is not the norm.

DECISION

RSA 273-A:8 places authority for determining and certifying bargaining units with the Public Employee Labor Relations Board. Rule PUB 302.05 sets conditions under which an existing bargaining unit may be modified. Changed circumstances are among the conditions under which a modification may be granted. The numbers and types of tutors employed by the School District have changed substantially since the last contract was negotiated. The Union's petition for modification of this bargaining unit is properly before the PELRB because of those changes.

However, the requested addition of tutors to the bargaining unit of educational assistants must be denied because the tutors employed by the Manchester School District are not eligible for bargaining unit membership as they do not meet the statutory definition of public employee. RSA 273-A:1 IX (d) excludes temporary employees from the body of public employees who may organize for the purpose of collective bargaining.

As authority for the exclusion of tutors, the School District relies on Keene State College Education Association v. State, 119 NH 1 (1979). The cited case is apt. In Keene State College, the Court affirmed the PELRB's ruling that a reasonable expectation of continued employment distinguishes the permanent employee from the temporary employee. Here, neither special education tutors nor Chapter I and II tutors have the required reasonable expectation of continued employment.

Both parties agree that, of all Chapter I and II tutors, only a very few have been employed by the School District prior to the 1994-95 school year. When these tutors leave the employ of the

a very few have been employed by the School District prior to the 1994-95 school year. When these tutors leave the employ of the City in June, they cannot plan to be rehired in October. On the other hand, special education tutors may appear on the tutor roster from year to year but it is not the usual situation and does not necessarily connote continuous employment. A tutor's re-employment for an eight week contract depends on a match of a tutor's abilities to a student's disability rather than depending on any requirement of the position of special education tutor. In theory and in practice, the special education tutor can not expect renewal at the end of a contract to provide services to an individual student.

The criteria for bargaining unit inclusion have not been met and the petition to modify the educational assistants' bargaining unit with the addition of tutors is hereby denied.

So ordered.

Signed this 31st day of May, 1995.

A handwritten signature in cursive script, appearing to read "Gail Morrison", written over a horizontal line.

Gail Morrison
Hearing Officer