



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CHESTERFIELD SUPPORT STAFF/	:	
NEA-New Hampshire	:	
	:	
	:	CASE NO. M-0632:3
Petitioner	:	
	:	DECISION NO. 95-65
v.	:	
	:	
CHESTERFIELD SCHOOL	:	
DISTRICT	:	
	:	
Respondent	:	

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APPEARANCES

Representing Chesterfield Support Staff/NEA-NH:

Mary E. Gaul, UniServ Director

Representing Chesterfield School District:

Douglas Hatfield, Esq.

Also appearing:

- Krista A. Pawloski, Chesterfield SSA
- Mary F. Casson, Chesterfield SSA
- Marilyn Taylor, Chesterfield SSA
- Robert W. Howard, Chesterfield
- Patricia Trow Parent, Chesterfield School District
- Martin Mahoney, Chesterfield School District

### BACKGROUND

On February 28, 1995, the Chesterfield Support Staff Association/NEA-New Hampshire (Association) filed a petition to modify its bargaining unit with the addition of tutors. On March 15, 1995, the Chesterfield School District (School District) filed its objection to the modification petition as written. It proposed modification by merger of the support staff unit with the teachers' bargaining unit which is also represented by NEA-New Hampshire. On May 3, 1995, the School District moved to withdraw its counter proposal and the motion was granted on May 8, 1995. The matter was scheduled and continued on two occasions and then heard before the undersigned hearing officer on June 7, 1995. The record was left open for the submission of certain evidence which was received on June 15, 1995.

### FINIDNGS OF FACT

1. The Chesterfield School District is a public employer of educators and other personnel within the meaning of RSA 273-A:1 X.
2. The Chesterfield Support Staff Association/NEA-New Hampshire is the duly certified representative of educational support staff employed by the School District. RSA 273-A:8 and 10. The bargaining unit is made up of "all instructional teachers' aides, library aides, secretaries, lunchroom personal and custodians."
3. The School District and the Association are parties to two contracts, the latter of which extends from July 1, 1993, through June 30, 1995, for which negotiations concluded on February 28, 1995. At the time of the certification in 1990, a hearing was requested on the inclusion of tutors in the bargaining unit. The request was withdrawn when the Association believed the parties had agreed that there was to be no one employed by the School District with the job title of tutor. However, the one tutor was retained in that position and nine additional tutors have been added. The dispute, evidenced by the letters of Mary Gaul of September 10, 1990, and of Douglas Hatfield,

Esq., dated September 14, 1990, has continued.  
(See evidence received June 15, 1995).

4. Ten tutors are employed to work in the inclusionary special education program. They assist students coded with special needs adjust to functioning heterogeneous classroom following an individual education plan (IEP) and a job description (Association Nos. 2, 3, 5 and 27). Tutors participate with teachers, instructional aides and others in drawing up the IEPs as part of the Local Educational Planning Team (LEPT).
5. Tutors perform work that is similar to work done by instructional aides. (Association 12, 13 and 27). They and their special needs students remain in the classroom which is geared to mainstreaming rather than isolating coded students. There are no "pull outs" for intensive remedial work. Students with special needs remain a part of the classroom throughout the day. The tutor performs instructional functions with the whole class or with a group, thereby deflecting attention from the special needs student and developing an attachment to the student and the class.
6. Tutors in Chesterfield grade papers, monitor recesses, prepare and present lessons, make copies for the class, assemble bulletin boards and lead group activities at the direction of a teacher or an administrator. Tutors are regular hourly employees who receive a pay check from the School District. They receive written yearly evaluations signed by Principal Martin Mahoney or a supervisor and drawn up by the teachers and the special education case manager. (Association Nos. 7 and 15). Their records are stored separately but this does not impact them within their school community as testimony from the tutors revealed.
7. Tutors have no right to continued employment and the School District has no obligation to continue to employ a tutor when the student to whom the tutor has been assigned leaves the School District. However, students tend to remain in this School District for many years and, when a student leaves, every effort

is made to reassign a tutor and generally this is possible. Mary Kathy Casson testified that she has been a tutor or a special education aide with the school system for six years. Marilyn Taylor and Krista Pawloski have been issued contracts for each of five years and two years respectively and each has a expectation of continued employment.

8. Patricia Trow Parent, the personnel manager for the School District stated that tutors lack a community of interest with instructional aides. They are more like substitute teaches than the regular employees. A tutor need not attend a class for which the assigned student is absent or has withdrawn. However, the tutors who testified expressed a self-felt community of interest with those involved with the special education program in the Chesterfield School District. Tutors, teachers' aides and teachers lunch together, see each other at meetings and social events. There is frequent contact and much interchange regarding learning activities throughout the day as both tutors and teachers' aides provide direct support in the educational process.

#### DECISION AND ORDER

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 and error are among the conditions under which a modification may be granted and both have occurred here. The addition of ten employees who are described as tutors warrants review especially since the condition precedent for canceling the 1990 certification hearing on tutor inclusion never occurred yielding an ongoing debate.

These tutors are regular employees who work, along with other support personnel, within the same organizational unit in Chesterfield. They share many of the conditions of employment common to those working in an educational institution. Support staff members and tutors are paid hourly wages and tutors share many job requirements and classroom duties with instructional aides who are bargaining unit members. Unlike the tutors in the recent case, AFSCME Local 298 Manchester School Department v. Manchester School District, Decision No. 95-27, (May 31, 1995), these tutors

can reasonably expect continued employment in the inclusionary special education program in Chesterfield as their charges move through the school system year after year.

The support staff members' bargaining unit shall be modified to include the ten tutor positions. The petition to certify a bargaining unit consisting of tutors, which was received at the hearing of June 7, 1995, Case NO. M-0717, is withdrawn as it is now moot.

So ordered.

Signed this 7th day of AUGUST, 1995.

A handwritten signature in black ink, appearing to read "G. Morrison", written over a horizontal line.

Gail Morrison  
Hearing Officer