



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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CHESTERFIELD SCHOOL DISTRICT :  
: Petitioner :  
: v. : CASE NOS. M-0632:4 :  
: M-0632:5 :  
CHESTERFIELD SUPPORT STAFF :  
ASSOCIATION, NEA-NH : DECISION NO. 1999-021 :  
: Respondent :  
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APPEARANCES

Representing Chesterfield School District:

Douglas Hatfield, Esq.

Representing Chesterfield Support Staff, NEA-NH:

Mary E. Gaul, UniServ Director

Also appearing:

Martin Mahoney, Chesterfield School District  
Cindi Warner, Chesterfield School District  
Robert W. Howard, Chesterfield Support Staff Assoc.  
Benjamin Larkin, Esq., Chesterfield School District

BACKGROUND

On July 23, 1998, the Chesterfield School District (District) filed a modification petition, Case No. M-0632:4, to remove the position of Secretary from the support staff bargaining unit. On July 30, 1998, the Chesterfield Support

Staff Association, NEA-New Hampshire (Association) filed its objections. On September 2, 1998, the Association filed unfair labor practice charges, pursuant to RSA 273-A:5 I (a), (c), (d), (g), (h), and (i). The District answered those charges on September 16, 1998. Both causes of action and the issues therein were consolidated and first scheduled for hearing on November 13, 1998. The parties requested a continuance in order to allow time for mediation and the matters were heard before the undersigned hearing officer on January 28, 1999.

#### FINDINGS OF FACT

1. The Chesterfield School District employs teachers, support staff and others to operate its one school, the Chesterfield School, and so is a "public employer" within the meaning of RSA 273-A:XI.
2. The Chesterfield Support Staff Association is the duly certified representative of teachers' aides, tutors, library aides, secretaries, lunchroom personnel and custodians. The bargaining unit was modified on one occasion when tutors were added in 1995. See Decision No. 1995-065 (August 7, 1995).
3. The District and the Association are parties to a collective bargaining agreement for the period July 1, 1995-June 30, 1998. (Joint Exhibit No. 1)
4. The District's modification petition states as reason for modification that, "As of June 1998, the School Board has abolished the position of Secretary and established the position of Administrative Assistant." The petition explains that the position of Administrative Assistant will perform many of the same functions as the Secretary but will have expanded responsibilities in relation to supervision and evaluation. Modification Petition, Explanation of Circumstances, No. 5.
5. Cynthia Warner testified that she was hired as the Secretary to the Principal in September 1997 and that she remains a member of the bargaining unit. She feels she should not be in the bargaining unit because of the confidential work she performs. Included in Warner's description of her confiden-

tial duties were the following. She types evaluations of bargaining unit members. She discusses staff evaluations with Principal Mahoney, especially those of the receptionist and part-time office worker positions. For certain other staff members, she provides written input on the evaluation forms filled out by the Principal. She oversees and directs the daily routines for the two part-time receptionists and for school aides. She edits and proofreads letters, memos and evaluations prepared by the Principal. She draws up the budget and tracks spending. She is responsible for school finances. She has responsibility for arranging leaves of absence for office staff and teachers. She is called at home when sick leave must be taken. Ms. Warner secures substitute teachers and has granted emergency leaves in the Principal's absence.

6. Ms. Warner has her own office and works year round. The FAX machine is located in her office and FAX transmissions sometimes contain sensitive labor relations material. Principal Martin Mahoney testified that he does not participate in bargaining but that he sits in on the bargaining process and advises the School Board. The School Board hires teachers but he hires, supervises and disciplines support staff. Mr. Mahoney testified that he values Ms. Warner's opinion on confidential personnel and labor relations matters.
7. Personnel records are kept in Keene but Mr. Mahoney retains a copy in his office. These files may contain letters from counsel on grievances and other contract administration matters. He does not wish to limit Ms. Warner's access to these files but he has considered doing so based on a past occurrence involving another secretary. Ms. Warner testified that, though her position is in the bargaining unit, she has no connection with the unit and feels loyalty to Mr. Mahoney. She has never been asked to provide information to the bargaining unit.
8. Job descriptions of the two positions, School Secretary, approved 8/22/95, and Administrative Assistant, no date of approval, are in the file.

(School District Exhibit No. 2 and Association Exhibit No. 3). The latter job description includes secretarial duties as well as administrative duties. Mr. Mahoney had drawn up the new job description with the title of Administrative Assistant and Ms. Warner reviewed it for accuracy and was given an opportunity to comment on the document.

9. On cross examination, Principal Mahoney testified that he was not sure when the School Board voted to abolish the position of Secretary and institute the position of Administrative Assistant but that no changes in duties or salary had occurred as a result. Ms. Gaul noted that the Secretary position is not included on the baseline list that gives salary, benefits and hours of support personnel. This document is dated November 16, 1998. (Association Exhibit No. 4)
10. Custodian, Robert W. Howard, Co-President of the bargaining unit, is on the bargaining team for a new contract. He recalls that, when bargaining began in the fall of 1997, the School Board proposed a large stipend for the Secretary. The bargaining unit felt the stipend was too large a part of the wage package and it was relinquished. President Howard recalls hearing nothing during bargaining about removing the position in question from the bargaining unit. However, he testified that he received notice of abolition of the position of Secretary on July 27, 1998, when the modification petition had been filed.

#### DECISION AND ORDER

RSA 273-A:8 authorizes the Public Employee Labor Relations Board to determine bargaining units and to rule on the modification of bargaining units. When removal of a position has been the subject of unsuccessful bargaining, a contested modification petition is not favored as a method for accomplishing the same end. Rule PUB 305.02 (b). Even less desirable, a failure at the bargaining table followed by unilateral institution of the changes opens the public employer to charges of unfair labor practice.

In the instant case, removal of the position from the bargaining unit was never on the table before modification was

petitioned in July 1998. A stipend for that position was on the table.

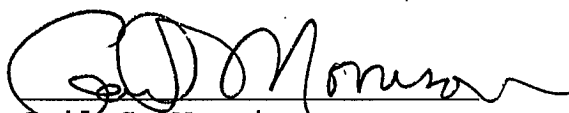
A change in secretarial personnel had occurred at the Chesterfield School in September 1997. The new Secretary, Ms. Warner, assumed additional responsibilities. Bargaining relating to the Secretary's position in early 1998 failed to yield a stipend. Later, during the last weeks of the collective bargaining agreement, on June 17, 1998, the District voted to remove the position of secretary from the bargaining unit and then filed a modification petition asking for removal of the secretary on July 23, 1998. The School Board's vote was anticipatory and was not followed by actual removal. Based on the Warner and Mahoney testimonies, Ms. Warner's position remains in the bargaining unit as of the time of the hearing. No unfair labor practice has occurred.

Facts relating to the nature of the position support exclusion. Mr. Mahoney does not negotiate but he attends negotiations as the Chesterfield School Principal. He advises School Board negotiating team members on the effects of proposals and he administers the resulting collective bargaining agreement. Though no grievance has recently been filed, he discusses confidential policy matters, including labor relations matters, with Ms. Warner. Ms. Warner is participating in the budgeting process in the evaluation of bargaining unit members and she acts in the stead of Mr. Mahoney in scheduling planned leaves and granting unplanned leaves for support staff and others.

Ms. Warner's duties imply a confidential relationship to the public employer within the meaning of RSA 273-A:1 IX (c). She is performing supervisory tasks as well. RSA 273-A:8 II. The request for modification of the bargaining unit by removal of the position of Secretary is hereby granted.

So ordered.

Signed this 17th day of March, 1999.



Gail C. Morrison  
Hearing Officer