

State of New Hampshire
Public Employee Labor Relations Board

Nashua Police Department Civilians, Teamsters Local 633

and

City of Nashua Board of Commissioners

Case No. G-0168-3
Decision No. 2018-114

Appearances:

Roger Travers, Business Agent/Organizer, Teamsters Local 633, Manchester, New Hampshire, for the Nashua Police Department Civilians, Teamsters Local 633

Steven A. Bolton, Esq., Corporation Counsel, City of Nashua, New Hampshire, for the City of Nashua Board of Commissioners

Background:

On May 3, 2018, the Nashua Police Department Civilians, Teamsters Local 633 (Union) filed a modification petition pursuant to N.H. Admin. Rule Pub 302.05 seeking to add the position of Animal Control Officer to the existing bargaining unit. The Union alleges that the Animal Control Officer is "the last full-time civilian non-supervisor at the Police Department" and that he has a community of interest with other employees in the existing bargaining unit.

The City of Nashua Board of Commissioners (City) objected to the petition on the grounds that there has been no change in circumstances warranting modification and that the Animal Control Officer has no community of interest with other employees in the bargaining unit. The City requests that the modification petition be denied.

The hearing was conducted on June 14, 2018 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties' factual stipulations are incorporated into the Findings of Facts below; and the decision is as follows.

Findings of Fact

1. The City is a public employer within the meaning of RSA 273-A:1, X.
2. The Union is the certified exclusive representative for the following bargaining

unit:

Unit: All full-time civilians, part-time detention specialists, outside detail specialist, secretary-domestic violence unit, custodian III, auto mechanic 2nd class, legal secretary, and part-time file clerk.

Excluded: Parking enforcement specialists, animal control officers, chief executive offices personnel, assistant communications supervisor, computer/ telephone specialist, co-emergency management director/community policing specialist, NIBERS/NCIC analyst, clerk typist II/records technician, reception, account clerk I, custodian I, assistant records supervisor, account clerk IV, secretary IV, assistant fleet maintenance supervisor, and all other part-time & per diem civilians.

See PELRB Decision No. 2011-145 (May 18, 2011).

3. The PELRB originally certified the Union as the exclusive representative of the Nashua Police Civilians bargaining unit on June 10, 1990. See PELRB Certification of Representative and Order to Negotiate, Case No. M-0627. Since 1990, this unit has been modified ten times. See PELRB Certifications of Representative and Orders to Negotiate, dated March 14, 1995; January 8, 1997; June 9, 1998; November 2, 1998; October 7, 1999; April 21, 2003 (PELRB Decision No. 2003-035); November 26, 2003 (PELRB Decision No. 2003-138); February 10, 2006 (PELRB Decision No. 2006-028); July 16, 2008 (PELRB Decision No. 2008-140); and May 18, 2011 (PELRB Decision No. 2011-145).

4. This bargaining unit was last modified on May 18, 2011. See PELRB Decision No. 2011-145. In its 2011 modification petition, the City sought to add the position of part-time File Clerk to and to remove the position of Assistant Fleet Maintenance Supervisor. See PELRB Decision No. 2011-144. The Union first objected to the petition but later withdrew its objection and agreed to the modification. At the time the PELRB granted 2011 agreed upon modification petition, the position of Animal Control Officer existed and was filled.

5. The Union and the City are parties to a collective bargaining agreement (CBA) effective from July 1, 2017 through June 30, 2020. See Union Exhibit 1.

6. The position of Animal Control Officer has been in existence in the Nashua Police Department for decades. See Joint Statement of Facts. Robert Langis has been employed in this position for 30 years.

7. No changes to the working conditions or description of the duties of this position have occurred since the date the bargaining unit was last agreed upon by the parties or since the last PELRB proceedings related to this bargaining unit. See Joint Statement of Facts.

8. During negotiations on the most recent CBA, the parties did not address the unit modification or the addition of the Animal Control Officer position to the bargaining unit.

Decision and Order

Decision Summary:

There has been no change in circumstances since the most recent representation proceedings to warrant a modification of the bargaining unit in this case. The Union's modification petition is denied.

Jurisdiction

The PELRB has jurisdiction of all petitions to determine and modify bargaining units

pursuant to RSA 273-A:8¹ and Admin. Rule Pub 302.05. See also *Prof. Fire Fighters of Wolfeboro v. Town of Wolfeboro*, 164 N.H. 18, 22 (2012); and *Appeal of the University System of N.H.*, 120 N.H. 853, 854 (1980).

Discussion:

The Union seeks to add the position of Animal Control Officer to the existing bargaining unit. The City objects to the petition for modification on the ground, among others, that there has been no change in circumstances warranting the addition of this position “since prior to the initial certification of this bargaining unit.”

Modifications of existing bargaining units are governed by Admin. Rule Pub 302.05, which provides in relevant part as follows:

(a) Where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed, or where a prior unit recognized under the provisions of RSA 273-A:1 is alleged to be incorrect to the degree of warranting modification in the composition of the bargaining unit, the public employer, or the exclusive representative, or other employee organization if the provisions of section (d) are met, may file a petition for modification of bargaining unit.

(b) A petition shall be denied if:

(1) The question is a matter amenable to settlement through the election process; or

(2) The petition attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force.

Pub 302.05. The language of Admin. Rule Pub 302.05 leaves the PELRB discretion in deciding whether or not to grant petitions to modify. See *Appeal of the Bow School District*, 134 N.H. 64,73 (1991).

¹“The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10...” RSA 273-A:8, I.

In accordance with Admin. Rule Pub 302.05, contested modification petitions must be supported by evidence demonstrating either that the circumstances have changed since the time of the prior bargaining unit proceedings or that a prior unit recognized under the provisions of RSA 273-A:1 is incorrect to the degree warranting modification. See *Rochester Municipal Managers Group and City of Rochester*, PELRB Decision No. 2009-182 (September 3, 2009) See also *Salem Public Administrators' Association and Town of Salem*, PELRB Decision No. 2009-171 (August 18, 2009); *Teamsters Local 633 of New Hampshire and Town of Hooksett*, PELRB Decision No. 2008-193 (September 25, 2008). Examples of a change in circumstances that may warrant modification of a bargaining unit include a creation of a new position,² a modification of a job description/duties,³ and an increase in working hours resulting in a material change in the nature of the position, e.g. an increase in daily contact with students, teachers and parents sufficient to permit a school nurse to be included in the teachers' bargaining unit because it intensified the community of interest between the school nurses and the teachers.⁴

In this case, the Union does not claim, or offer any evidence to prove, that the unit is "incorrect to the degree warranting modification." The threshold consideration, therefore, is whether a moving party, here the Union, has satisfied its burden of proving by a preponderance of the evidence that a change in circumstances has occurred since the PELRB modified the bargaining unit on May 18, 2011. See Admin. Rules Pub 302.05 and Pub 201.06 (c). See also *Rochester Municipal Managers Group and City of Rochester*, *supra*, PELRB Decision No. 2009-

²See *New Hampshire Retirement System and State Employees Association of New Hampshire, Inc., SEIU Local 1984*, PELRB Decision No. 2013-262 (June 30, 2015), *rev'd on other grounds, Appeal of New Hampshire Retirement System*, 167 N.H. 685 (2015). See also *Town of Gilford and AFSCME Council 93, Local 534, Gilford Public Works Employees*, PELRB Decision No. 2015-196 (August 31, 2015).

³*Windham School District, SAU #95 and Windham Education Association, Affiliated with NHEA/NEA*, PELRB Decision No. 2015-148 (June 30, 2015). See also *Freedom School Employees Association, NEA-NH and Freedom School District*, PELRB Decision No. 2008-207 (October 13, 2008).

⁴*Appeal of Bow School District*, *supra*, 134 N.H. at 73.

182; *Salem Public Administrators' Association and Town of Salem*, supra, PELRB Decision No. 2009-171; *Teamsters Local 633 of New Hampshire and Town of Hooksett*, supra, PELRB Decision No. 2008-193.

In *Rochester Municipal Managers Group and City of Rochester*, supra, PELRB Decision No. 2009-182, the Union petitioned to modify the recently certified bargaining unit by adding a Communications Supervisor position. This position existed and was filled at the time the unit was certified. *Id.* The Communications Supervisor position was not included in the previous certification petition due to an oversight and the only change since the issuance of the certification was the change in the employee's status from probationary to permanent. *Id.* The Union's petition was dismissed on the grounds that the change in the employee's status from probationary to permanent was not a material change in circumstances warranting modification and that the correction of an oversight, or a mistake, was not a sufficient ground for filing a modification petition. *Id.*

Similarly, in *Salem Public Administrators' Association and Town of Salem*, supra, PELRB Decision No. 2009-171, the union's modification petition was denied because there was insufficient evidence that there had been a change in circumstances since the most recent proceedings were completed or that the current composition of the bargaining unit was incorrect to the degree warranting modification. In *Salem*, the most recent unit-related proceedings concluded in 2007, two years prior to the filing of the modification petition when the parties' agreement on unit composition was accepted and approved by the PELRB. See *id.* In its 2009 modification petition, the union claimed that six previously-excluded positions should be added to the unit because the Town failed to make progress on individual employment agreements with six employees. The PELRB found that "[t]he evidence concerning the Town's failure to make

progress to the [Union's] satisfaction on individual employment agreements with some or all of the employees holding the six positions excluded from the bargaining unit in 2007 is not a change in circumstance which justifies these modification proceedings." *Id.* See also *Teamsters Local 633 of New Hampshire and Town of Hooksett*, PELRB Decision No. 2008-193 (dismissing modification petition because there had been no change in circumstances since prior bargaining unit proceedings); *Lebanon Support Staff Association, NEA-New Hampshire and Lebanon School District*, PELRB Decision No. 2004-005 (January 12, 2004) (denying modification petition because there had been no change in circumstances relative to formation of bargaining unit since negotiations on most recent CBA); *Keene Police Officer's Association, NHFT, AFT, AFL-CIO and City of Keene*, supra, PELRB Decision No. 2004-077 (denying modification petition because there was insufficient evidence of change in circumstances).

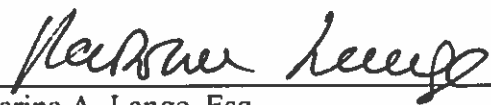
Like the petitioners in *Rochester* and *Salem*, cases, the Union here failed to offer sufficient evidence of a material change in circumstances warranting modification of an existing agreed upon, and approved by the PELRB, bargaining unit. Here, the parties last modified the composition of the bargaining unit by agreement (the Union withdrew its objection to modification) in 2011 when the PELRB granted the City's agreed upon modification petition and issued the unit modification order. See PELRB Decision Nos. 2011-144 and 2011-145. The position of Animal Control Officer existed and was filled at the time of the 2011 modification proceedings. The Union did not request then that the position be added to the bargaining unit nor did the Union brought up the issue of the unit modification at the negotiations on the current CBA. Here, the Union offered no evidence of a change in circumstance beyond the testimony of the Animal Control Officer that he now wishes to join the union in order to prevent the management from moving his position to another department as well as to improve the terms of

his employment. The Union offered no proof of the City's intent to move or otherwise modify the Animal Control Officer position. Furthermore, the Union stipulated that "[n]o changes to the working conditions or description of the duties of this position have occurred since the date the bargaining unit was last agreed upon by the parties." See Joint Statement of Facts (June 4, 2018). Therefore, the Union's evidence is insufficient to prove the existence of a material change in circumstances warranting modification of the unit.

For the foregoing reasons, the Union's petition for modification is denied. Because the Union's petition is denied pursuant to Admin. Rule Pub. 302.05, it is unnecessary for the Hearings Officer to address the other objections raised by the City.

So ordered.

Date: 7/27/2018



Karina A. Lange, Esq.
Staff Counsel/Hearing Officer

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