



State of New Hampshire
Public Employee Labor Relations Board

Farmington Education Support Professionals United, NEA-NH

and

Farmington School District

Case No. E-0047-7

Decision No. 2020-260

Appearances: Peter Miller, UniServ Director, for the Petitioner

Barbara F. Loughman, Esq., Soule Leslie Kidder, Wolfeboro, NH
for the Respondent

Background:

On July 6, 2020, the Farmington Education Support Professionals United, NEA-NH (Association) filed a modification petition pursuant to N.H. Admin. Rule Pub 302.05 seeking to add the position of administrative assistant to the existing bargaining unit set forth in PELRB Decision No. 2012-108 (May 24, 2012). See also PELRB Certification of Representative and Order to Negotiate, Case No. M-0621 (February 5, 1990).

The District objects to the modification petition for the following reasons: (1) the petition violated Admin. Rule Pub 302.05 in that there have been no changes in circumstances and the unit is not incorrect to the degree warranting modification; (2) administrative assistants lack a community of interest with other employees in the existing bargaining unit (paraprofessionals); (3) administrative assistants are confidential employees within the meaning of RSA 273-A:1, IX (c); (4) two of the eight administrative assistants are employees of the SAU #61 and not of the District; and (5) adding administrative assistants to the same unit with paraprofessionals will

adversely affect the efficiency of the District's operations and will create a potential for a division of loyalties.

A hearing was held on September 22, 2020. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties' Agreed Statement of Uncontested Facts is incorporated into the Findings of Fact below and the decision is as follows.

Findings of Fact

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

bargaining unit:

Unit: All paraprofessionals and food service workers.

Excluded: Principals and Superintendent.

See PELRB Decision No. 2012-108 (May 24, 2012).

3. The bargaining unit currently includes 47 paraeducators and no food service workers. See Agreed Statement of Uncontested Facts at 1.

4. The Association and the District are parties to a collective bargaining agreement (CBA) effective from July 1, 2018 through June 30, 2021 (2018-21 CBA). See Joint Exhibit 1.

5. On December 12, 1988, the Farmington Teachers Association, NHFT/AFT/AFL-CIO filed an agreed upon petition to establish a new bargaining unit consisting of paraprofessionals and food service workers but excluding secretaries and other positions. The PELRB conducted a representation election on January 20, 1989 based upon the agreed bargaining unit description and by order of the same date certified the Farmington Teachers Association, NHFT/AFT/AFL-CIO as the first representative of a Farmington School District bargaining unit consisting of support

personnel, aids and food service workers but excluding secretaries and other positions. See PELRB Case No. T-0388 and January 20, 1989 Certification of Representative and Order to Negotiate.

6. On February 5, 1990, after challenge election proceedings, the Association was certified as the exclusive representative of the bargaining unit, and the position description was changed to "paraprofessionals and food service workers" from "support personnel, aids and food service workers." The 1990 challenge election proceeding did not involve any requests to modify the existing bargaining unit by adding or removing positions. See PELRB Case No. M-0621.

7. In 2012, the Association filed an agreed upon Modification Petition seeking to change only the name of the exclusive representative from "Farmington Teachers Association-Paraprofessional and Food Service Workers/NEA-New Hampshire, NEA" to "Farmington Education Support Professionals United, NEA-NH." The Association did not request that the position of administrative assistant be added to the bargaining unit. This petition was granted. See PELRB Decision No. 2012-107. See also PELRB Decision No. 2012-108 (current certification).

8. The current case is the first time since the bargaining unit's formation in 1989 that a petition has been filed to change the composition of the unit.

9. The Association provides the following explanation of the alleged change in circumstances/reasons for its modification petition:

Job titles, descriptions, and duties have changed to intensify the community of interest between administrative assistants and paraprofessionals. In 1990, job titles were "School Secretary." In 2019-20, job titles were "School Administrative Assistant." As suggested by the change in job title, job duties have become far more complex, requiring competent use of technology including desktop computers, online databases, electronic time clocks, electronic door locks, etc. In addition to increased use of technology, employees are required to perform other duties not formerly performed and to spend more time assisting students and nonsupervisory employees. Administrative Assistants' educational duties have changed and paraprofessional duties have changed such that the two groups of employees now share a much stronger community of interest.

See July 6, 2020 Petition for Modification, at 7.

10. The District employs six administrative assistants - two at Valley View Community School (Traci Cameron and Tracy Donovan-Lavolette), two at Henry Wilson Memorial School (Sharon Langis and Diana Hagar), and two at Farmington High School (Cheryl Moody and Diana Jensen). School Administrative Unit #61 employs two administrative assistants (Sheryl Olstad and Darlene Lemire).

11. SAU #61 is a single-district SAU. The budget for SAU #61 and for the Farmington School District is presented under a single warrant article at the annual school district meeting. See Agreed Statement of Uncontested Facts at 4.

12. Paraeducators and administrative assistants work in a common geographic location. See Agreed Statement of Uncontested Facts at 6.

13. Paraeducators work only during the school year (August to June) and for 32.5 hours per week. Administrative assistants work 40 hours per week year-round. See Agreed Statement of Uncontested Facts at 3.

14. The position of secretary has existed in the District since at least 1989. PELRB Certification of Representative and Order to Negotiate, Case No. T-0388 (January 20, 1989). This position was later renamed "Administrative Assistant."

15. Paraprofessionals "report to the assigned special educator or Title I Coordinator under the direction of the building administration," as well as to the Director of Student Services. Paraprofessionals supervise "no other employees." Position Description for a Paraprofessional provides as follows:

Paraprofessionals work as a team member with regular and special education staff to support students with special needs in and out of the classroom. Paraprofessionals must have the ability to work effectively with students on an individual or group basis under the direct and close supervision of the professional staff. The paraprofessional must be able to demonstrate mastery of the basic skills required in the curriculum level and demonstrate skills and knowledge required to work with students at their

developmental levels. Paraprofessionals must hold an Associate's Degree or have completed two years of college coursework, or pass the state qualification exam in order to work in a Title I school in the district or in the Title I program.

See Joint Exhibit 9.

16. Paraprofessionals Responsibilities include the following:

1. Implementation of teacher planned instruction.

- Implements plans created by and under direct supervision of a teacher, special educator, or related services provider.
- Monitors and provides assistance to students during classroom activities.
- Supports students using instructional modifications for lessons prepared by the class teacher or special educator.
- Checks for work completion.
- Reinforces skills previously taught.
- Communicates with team members about a student's program.
- Shares and received information about a student's progress or program as requested.
- Records and charts data.
- Prepares instructional materials as provided by classroom teacher...

...

2. Supervision of Students

- Supervises students as lunchtime.
- Supervises students at playground and recess.
- Within contract hours, supervises students' arrival and departure.
- Supervises study groups.
- Supervises students during transitions.

3. Behavioral and Social Support

- Implements behavioral student support plans developed by teacher or team.
- Communicates with team members about a student's program and behaviors.
- Observes, records, and charts students' behavioral responses.
- Facilitates student interactions.

4. Performs other tasks as assigned by the special education case manager or Building Principal.

Technology and Computer Skills: Able to compose emails and utilize our email system for communication. Must have ability to effectively and appropriately interact with students of all ages, faculty, and administration.

See Joint Exhibit 9.

17. The current position Description for School Administrative Assistant (formerly

School Secretary) provides in part as follows:

Role Qualifications: High School Diploma or equivalent, computer literate, word processing, computer skills, and a personality conducive to the successful operation of a fast paces office, and bookkeeping skills.

Role Objective: To provide administrative support and secretarial services for the school staff. The Administrative Assistant has the primary responsibility to assist the Principal and the Assistant Principal with the day to day operations of the school...

See Joint Exhibit 8.

18. The School Administrative Assistant's responsibilities include the following:

Foster an attitude of cooperation and positive public relations with the school patrons.

Be knowledgeable about and interpret school policies and rules as applicable.

Prepare correspondence, notices, bulletins, and reports as directed.

Receive, screen and prioritize calls.

Coordinate visitor sign ins, sign outs, and student dismissals.

Monitor and assist communications between buses, parent calls and other schools.

Distribute U.S. and interschool mail.

Maintain an adequate inventory of supplies and materials.

Maintain office/copy room machines, including faxes, copiers, etc.

Organize and maintain student files, both electronic and hard copy.

Organize and maintain Personnel files.

Other filing may be done as necessary.

Manage and maintain records for accounts payable/receivable, as well as general bookkeeping for building level accounts.

Enter purchase orders as needed.

Prepare, manage, and maintain monthly/annual reports, and other records.

Register new students.

Other duties assigned as deemed necessary by the Administrator.

See Joint Exhibit 8.

19. Other than the change in the position title from secretary to administrative assistant and the increase in use of digital devices, such as computers and other technology, to perform their duties, no significant changes to the administrative assistants' working conditions or job duties have occurred since the current composition of the bargaining unit was first certified in 1989.

20. The parties did not address the unit modification or the addition of the administrative assistant position to the bargaining unit during negotiations on the 2018-21 CBA.

Decision and Order

Decision Summary:

The evidence is insufficient to prove that there has been a sufficient change in circumstances since the bargaining unit was formed in 1989 to warrant a modification of the bargaining unit in this case. The Union's modification petition is dismissed.

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 administrative assistant to the existing bargaining unit. The District 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.

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

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.

(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).

In accordance with Admin. Rule Pub 302.05 (a), contested modification petitions must be supported by the evidence demonstrating either that the circumstances have changed since the formation of the bargaining unit relative to bargaining unit composition or that the unit "is incorrect to the degree warranting modification."² *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,³ a modification of a job description/duties,⁴ and an increase in working hours resulting in a material change in the nature

² Admin. Rule Pub 302.05(b)(2) does not come into play unless there is evidence that the parties actually negotiated a bargaining unit composition during the most recent CBA negotiations. The purpose of this subsection is to "prevent the parties to the CBA from agreeing to unit composition and then entering the CBA on that basis and thereafter ... appearing at the PELRB and, contrary to the prior agreement on the unit composition and the CBA, asking the PELRB to alter the bargaining unit." *See New England Police Benevolent Assn, Local 50 & 55 and State of New Hampshire, Dept of Safety, DMV*, PELRB Decision No. 2006-169 (October 5, 2006). In this case, there is no evidence of such negotiations taking place during the bargaining on the most recent CBA. See Findings of Fact at 20.

³ *See 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).

⁴ *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).

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.⁵)

The threshold consideration in this case is whether the Association has met its burden of proving by a preponderance of the evidence that a sufficient change in circumstances has occurred since the bargaining unit composition was last certified. See Admin. Rules Pub 302.05 and Pub 201.06 (c). See also *Rochester Municipal Managers Group and City of Rochester*, PELRB Decision No. 2009-182; *Salem Public Administrators' Association and Town of Salem*, PELRB Decision No. 2009-171; *Teamsters Local 633 of New Hampshire and Town of Hooksett*, PELRB Decision No. 2008-193.

In *Rochester Municipal Managers Group and City of Rochester*, PELRB Decision No. 2009-182, the union petitioned to modify a 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*, PELRB Decision No. 2009-171, the union's modification petition was denied because there was

⁵*Appeal of Bow School District*, supra, 134 N.H. at 73.

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 (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).

Conversely, in *Appeal of the Bow School District*, supra, 134 N.H. 64, at 72, the Supreme Court affirmed the PELRB decision allowing the school nurses to be added to the existing teachers' bargaining unit. In *Bow*, the changes in circumstances included an increase in nurses' working hours and in contact with students. The Court found that these changes increased nurses'

community of interest with teachers and, thereby, justified the modification of the bargaining unit.

See *id.*

In this case, like the petitioners in *Rochester* and *Salem*, the Association failed to offer sufficient evidence of a material change in circumstances warranting modification of an existing bargaining unit. Such evidence might have included testimony and documentary evidence (e.g. the previous and current job descriptions) showing the changes in job duties increasing a community of interest between paraprofessionals and administrative assistants. Based on the evidence offered by the Association, it appears that the main change with respect to administrative assistants is the increase in use of technology, i.e. a change in the tools used to perform their duties, rather than the change in the job duties themselves. Such a change does not intensify administrative assistants' community of interest with paraprofessionals and does not constitute a sufficient change in circumstances warranting modification of a bargaining unit at this time.


Unlike the union in *Bow*, the Association here mainly relies on the change in the job title from "secretary" to "administrative assistant" and increase in use of technology. However, I disagree with the Association that the name change and/or the "competent use of technology including desktop computers, online databases, electronic time clocks, electronic door locks" intensify a community of interest between administrative assistants and paraprofessionals. I also find insufficient evidence to support the Association's assertion that administrative assistants now spend more time "assisting students."

For the foregoing reasons, the Association failed to prove the existence of a sufficient change in circumstances to justify a modification of the bargaining unit at this time. Likewise, the evidence is insufficient to show that the existing bargaining unit is "incorrect to the degree of warranting modification." Accordingly, the petition for modification is dismissed. Because the

Association's petition is dismissed pursuant to Admin. Rule Pub. 302.05, it is unnecessary to address the other objections raised by the District.

So ordered.

Date: 11/10/2020


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

Distribution: Peter Miller, UniServ Director
Barbara F. Loughman, Esq.