Affirms PELRB Decision
No. 2002-007

THE SUPREME COURT OF NEW HAMPSHIRE

Public Employee Labor Relations Board

APPEAL OF CITY OF MANCHESTER

No. 2002-341 April 4, 2003

City Solicitor's Office, of Manchester (Daniel D. Muller, Jr. on the brief and orally), for the petitioner.

Dumont, Morris & Burke, of Boston, Massachusetts (John D. Burke on the brief and orally), for the respondent, Teamsters Local Union No. 633 of New Hampshire.

Stephen J. Judge, acting attorney general (Michael K. Brown, senior assistant attorney general, on the brief and orally), for the State, as amicus curiae.

DALIANIS, J. The City of Manchester (City) appeals a ruling of the New Hampshire Public Employee Labor Relations Board (PELRB) granting the Teamsters Local Union No. 633 of New Hampshire's (Union) petition for certification. On appeal, the City argues that: (1) the Union's petition was filed too close to the City's budget submission date to be entertained under New Hampshire Administrative Rules, Pub 301.01 (Rule 301.01); and (2) the PELRB, not the City, is required to pay for the preparation of the transcript for inclusion in the record on appeal. We affirm.

On October 15, 2001, the Union filed its petition for certification of a bargaining unit consisting of certain employees of the City Public Library. At the time, the bargaining unit had no certified representative. The City's budget submission date was March 31, 2002. On November 29, 2001, the PELRB's hearing officer conducted a hearing on the petition for certification. The City and the Union stipulated to essentially all substantive issues, including the composition of the bargaining unit. The City objected to the petition arguing, in part, that it was untimely filed under Rule 301.01(b) because the certification election would be too close to the City's budget submission date.

On January 23, 2002, the hearing officer granted the Union's petition, noting that any delay in the election was due in part to the actions of the parties. The hearing officer further held, however, that due to the Union's failure to provide the proper notice of intent to bargain under RSA 273-A:3, II(a) (1999), the City could not be compelled to negotiate "cost items." Thus, the only result of

the hearing officer's decision, assuming that the bargaining unit voted for representation, would be that the City would be required to negotiate non-cost items with the Union. Nonetheless, the City filed a request for review of the hearing officer's decision and two motions to stay with the PELRB. On March 12, 2002, the PELRB denied the City's request for review and motions to stay. The election was held on March 25, 2002, and the PELRB issued a certificate of representation for the bargaining unit on April 4, 2002. The City filed an objection to the conduct of the election on or about March 29, 2002, and a motion for reconsideration on April 9, 2002. The PELRB denied each on May 6, 2002. This appeal followed.

When reviewing a decision of the PELRB, "we defer to its findings of fact, and, absent an erroneous ruling of law, we will not set aside its decision unless the appealing party demonstrates by a clear preponderance of the evidence that the order is unjust or unreasonable." Appeal of State of N.H., 147 N.H. 106, 108 (2001) (quotation omitted).

The first issue on appeal is the interpretation of two subsections of Rule 301.01, which govern the timing for the filing of certification petitions.

Rule 301.01, states, in pertinent part:

> (a) A petition for certification as the exclusive representative of a bargaining unit having no certified representative may be filed at any time. A petition for certification as the exclusive representative of a bargaining unit for which a collective bargaining agreement constituting a bar to election under RSA 273-A:11, I (b) presently exists shall be filed no more than 210 days and no less than 150 days prior to the budget submission date of the affected public employer in the year that agreement expires, notwithstanding any provisions in the agreement for extension or renewal.
> (b) Any petition filed less than 150 days prior to the budget submission date of the affected public employer shall be accompanied by an explanation of why the petition could not have been filed sooner. The board shall refuse to entertain any petition filed so close to the budget submission date of the affected employer that the board cannot reasonably conduct the election called for in the petition within 120 days of the budget submission date.

N.H. Admin Rules, Pub 301.01.

In its order affirming the hearing officer's ruling, the PELRB found, among other things, that the Union's petition was properly granted because under Rule 301.01(a), it was "possible to hold a bargaining agent election within a month or two of an actual budget submission date, with the Union being certified thereafter but having missed the requisite notice under RSA 273-A:3, II(a) . . . ."

On appeal, the City argues that Rule 301.01(b) is an exception to the general rule contained in Rule 301.01(a), which permits a petition to be filed "at any time" if the bargaining unit has no certified representative. Under the City's interpretation of Rule 301.01(b), the PELRB cannot entertain any petition that is filed so close to the budget submission date that the board cannot reasonably conduct the election at least 120 days prior to the budget submission date, regardless of whether the bargaining unit already has a certified representative. Thus, the City argues that the board misinterpreted its rules by entertaining the Union's petition for which an election could not be held at least 120 days prior to March 31.

> An agency's interpretation of its regulations is to be accorded great deference. Nevertheless, our deference to an agency's interpretation of its own regulations is not total. We still must examine the agency's interpretation to determine if it is consistent with the language of the regulation and with the purpose which the regulation is intended to serve.

Appeal of Land Acquisition, 145 N.H. 492, 495-96 (2000) (quotation and brackets omitted).

To the extent that the PELRB held that Rule 301.01(b) only applies when the bargaining unit already has a certified representative, we agree. The only statutory provision regarding the timing of an election is RSA 273-A:11, I(b), which states:

> I. Public employers shall extend the following rights to the exclusive representative of a bargaining unit . . . :
> (b) The right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement. Notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire.

This provision, known as the "contract bar rule," plainly deals exclusively with situations where the bargaining unit already has a certified representative. There is no analogous provision for situations where the bargaining unit has no certified representative at the time the petition is filed. The PELRB regulations must be interpreted with this statutory scheme in mind. See Land Acquisition, 145 N.H. at 495-96. The first sentence of Rule 301.01(a) permits a filing "at any time" if the bargaining unit has no certified representative, reflecting the lack of statutory time limits upon an election for such a certification. The remainder of Rule 301.01(a) references RSA 273-A:11, I(b), and sets a time frame for the filing of petitions where the bargaining unit has a certified representative in order to implement the contract bar rule. Rule 301.01(b), while referencing "any petition," follows from the second part of Rule 301.01(a), and further implements the statutory scheme. Thus, any petition, where the bargaining unit has a certified representative, filed within 150 days of the budget submission date must be accompanied by an explanation of the delay such that the board can ensure that an election may be held within the statutory period. N.H. Admin Rules, Pub 301.01(b). Finally, pursuant to the final part of Rule 301.01(b), in accordance with RSA 273-A:11, I(b), the PELRB is precluded from entertaining those petitions where a certified representative exists that would violate the contract bar rule by resulting in an election being held within 120 days of the budget submission date.

Read in the context of the statutory scheme, Rule 301.01 establishes that the time constraints contained within Rule 301.01(b) apply only when the bargaining unit has a certified representative. Moreover, under the City's interpretation of the rule, if the bargaining unit has no certified representative then the petition for certification could not, in fact, be filed "at any time," as Rule 301.01(a) allows. Instead, such a petition would be subject to the time constraints contained within Rule 301.01(b). This construction of the rule would effectively eliminate the first sentence of Rule 301.01(a). We will not interpret the rule in such a way as to render a significant portion of it meaningless. Cf. N.H. Dep't of Resources and Economic Dev. v. Dow, 148 N.H. 60, 64 (2002) (interpreting statutory language). Thus, petitions for certification for bargaining units without a certified representative may be filed at any time without regard to the time limits contained within the contract bar rule and Rule 301.01(b). Accordingly, the PELRB properly considered the Union's petition for certification.

Because we hold that Rule 301.01(b) does not govern petitions for certification where the bargaining unit has no certified representative, we need not address the City's arguments regarding the application of Rule 301.01(b) to the Union's petition.

Finally, the City argues that the PELRB must bear the initial cost of the preparation of the transcript of the proceedings below for inclusion in the record on appeal. Upon our acceptance of this appeal, we ordered the board to file a certified copy of the record. At the time of the order, the PELRB had a written policy under which the moving party had to bear the burden and cost of

preparing a transcript for inclusion in the record. The PELRB did not follow the rule-making procedures established by RSA chapter 541-A in adopting this policy.

The City argues that the PELRB's policy is not binding upon it. We agree. We are not persuaded by the State's argument that the policy was a properly adopted "procedure" pursuant to RSA 273-A:2. Under RSA 273-A:2, VI, the PELRB may "make, amend and rescind in the manner prescribed by RSA 541-A such rules, establish such procedures and conduct such studies as may be necessary to carry out the provisions of this chapter." A "rule" is defined as

> each regulation, standard, or other statement of general applicability adopted by an agency to (a) implement, interpret, or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency, whether members of the general public or personnel in other agencies.

RSA 541-A:1, XV (emphasis added). Rules are valid only if adopted in accordance with the procedures prescribed by RSA chapter 541-A. See Asmussen v. Comm'r, N.H. Dep't. of Safety, 145 N.H. 578, 592-93 (2000). Thus, because the PELRB's policy created a procedure binding upon persons outside the agency, the board was required to follow the procedural requirements for rule-making. Because the PELRB did not do so, the policy cannot bind the City.

The City further argues that the Supreme Court Rules governing the procedure for appeals from administrative agencies do not require the moving party to pay for the transcription. In support of its argument, the City points to Rule 10, "Appeal from Administrative Agency." Sup. Ct. R. 10. The rule states, in pertinent part:

> (2) The order sought to be reviewed or enforced, the findings and rulings, or the report on which the order is based, and the pleadings, evidence, and proceedings before the agency shall constitute the record on appeal.
> (3) The administrative agency, complying with the provisions of rule 6(2) as to form, shall file the record with the clerk of the supreme court as early as possible within 60 days after it has received the supreme court's order of notice. The original papers in the agency proceeding or certified copies may be filed.

Id. The City argues that because the agency, not the moving party, is required to file the record with the court, the agency must also bear the reasonable cost of preparing the transcript as part of the record. We disagree. Rule 10 requires the agency to file the record, not to prepare transcripts that are not already contained therein. Rule 10 is silent as to who must bear the burden of the cost of preparing the transcript.

In Petition of Dunlap, 134 N.H. 533 (1991), we addressed this same issue in the context of a petition for certiorari review of an administrative agency order. There, while Rule 10 applied to the petition, we did not rely upon that rule in making our determination. Id. at 547-48. Rather, we sought to determine whether the moving party was required initially to bear the burden of the full, reasonable costs of transcription under former RSA 541-A:16 (Supp. 1990)(current version at RSA 541-A:31), or whether the costs were to be limited to the fees specified in RSA 541:11 (1997). RSA 541:11 did not directly apply because the petition was not brought as a RSA chapter 541 appeal, but rather as a petition for a writ of certiorari.

The present appeal, however, has been brought pursuant to RSA chapter 541, and thus we must determine whether RSA 541:11 applies. In matters of statutory interpretation, "this court is the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." K & J Assoc. v. City of Lebanon, 142 N.H. 331, 333 (1997) (quotation omitted). We first look to the statutory language, and whenever possible construe that language according to its plain and ordinary meaning. See Appeal of Naswa Motor Inn, 144 N.H. 89, 90 (1999). RSA 541:11, enacted in 1915 and not since substantively amended, states:

> The commission shall collect from the party making the appeal a fee of ten cents per folio of one hundred words for the copy of the record and such testimony and exhibits as shall be transferred, and five cents per folio for manifold copies, and shall not be required to certify the record upon any such appeal, nor shall said appeal be considered, until the fees for copies have been paid.

The statute refers only to fees for making copies of the record, not for the cost of transcription. By its plain meaning, the statute requires that the moving party pay the agency for copies of the preexisting record. Here, the contested cost is for the preparation of transcripts, not copies thereof. Thus, RSA 541:11 does not govern the issue before us. We express no opinion as to the applicability of this statute in general.

The State argues that we should extend our holding in Dunlap and apply RSA 541-A:31, VII to RSA chapter 541 appeals. RSA 541-A:31, VII requires a party requesting a transcript to pay "all reasonable costs for such transcription." In Dunlap, we applied former RSA 541-A:16 by analogy

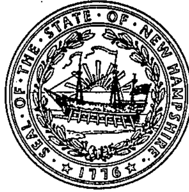
to certiorari review of administrative agencies and required the moving party to initially bear the full, reasonable cost of the transcription. Dunlap, 134 N.H. at 548-49. In doing so, we recognized that the legislature has expressed its desire that "in a substantial number of State agency matters, the full reasonable costs of transcription be borne by the requesting party." Id. at 548. Indeed, this court has expressed a similar view. Supreme Court Rule 15(2) requires the moving party to pay, in the first instance, the cost of transcription in other types of appeal. Thus, in nearly every appeal before this court, the moving party is required to initially bear the cost of the preparation of the transcript. We find no basis to limit this practice to all appeals other than those brought under RSA chapter 541. Accordingly, we extend our holding in Dunlap to RSA chapter 541 appeals and require the moving party to initially bear the full, reasonable cost of preparing the transcript for inclusion within the record. We note that the prevailing party may be able to recover transcription costs under Supreme Court Rule 23.

Thus, the City, as the moving party, must initially bear the full, reasonable cost of preparing the transcript. RSA 541-A:31, VII, however, does not require the City to actually arrange for the transcription. Because the PELRB required the City to arrange for the preparation of the transcript, the City argues that its cost in doing so may have exceeded the cost that the PELRB would have incurred. Consequently, the City argues that "there could still be an issue of reimbursement." However, the City provides no support for this argument, so we have no reason to conclude that the cost that the City incurred in arranging for the transcription exceeded that which the PELRB would have incurred. Thus, assuming without deciding that reimbursement would be ordered, we have no basis upon which to order such reimbursement.

Affirmed.

BROCK, C.J., and BRODERICK, NADEAU and DUGGAN, JJ., concurred.

NH Supreme Court affirmed this decision on 4-4-2003, Slip Op. No. 2002-341
(NH Supreme Court Case No. 2002-341).



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire Petitioner	*	Case No. M-0786
v.	*	Decision No. 2002-007
City of Manchester Public Library Respondent	*	

REPRESENTATIVES

For Teamster Local 633 of New Hampshire:

John D. Burke, Esq.

For the City of Manchester Public Library:

David A. Hodgen, Chief Negotiator

Also Appearing:

John Brisban, Library Director
Thomas D. Noonan, Business Agent

BACKGROUND

The Teamsters Local 633 of New Hampshire, (hereinafter referred to as the "Petitioner") filed a Petition for Certification with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") on October 15, 2001 proposing creation of a single bargaining unit comprised of all regular full time and regular part time positions entitled "Assistant Librarian", "Librarian I", "Librarian II", "Clerk I", "Clerk II", "Information Specialist", "Office Assistant" and "Secretary" employed by the City of

Manchester (hereinafter referred to as the "City") at the Manchester Public Library . On that same day, the PELRB forwarded a "Notice of Filing" to the City. On October 30, 2001 the City filed its exceptions to the petition. On November 6, 2001 a Pre-Hearing Order and a separate notice scheduling an evidentiary hearing to be conducted on November 16,2001 was forwarded to the parties

A hearing on the matter was held before the undersigned Hearing Officer on November 29, 2001. Several issues raised by the Respondent's Exceptions were preliminarily addressed through discussions between the respective representatives such that the only issues upon which testimony and evidence was introduced at the hearing were directed to Respondent's Exception #1 involving a determination of whether or not the Union had completed "Item 6" on the petition form and had made a reasonable effort to reach agreement on the composition of this unit. Following those same preliminary discussions, the parties agreed that no additional evidence, beyond that which appeared in the pleadings, was necessary to a determination of the issue raised by Respondent's Exceptions #5 and #6 calling for a determination of whether or not the Union's Petition for Certification is before the PELRB in a timely manner. The parties agreed to submit post-hearing Memoranda of Law on this issue of timeliness. The parties further agreed that in the event the unit composition was to be accepted as submitted and an order of election to issue by the PELRB, the Librarian I's and Librarian II's were professional positions and would vote separately. The Union moved to amend the budget submission date appearing within the Petition to read "March 31" and, without objection, it was granted. The hearing then went forward with witness testimony presented on the only evidentiary issues remaining between the parties, namely Respondent's Exception #1, described above. Following the conclusion of the hearing, the record remained open for submission of legal memoranda. The parties filed their respective Memorandum of Law on December 12, 2001 and the record was thereupon closed.

FINDINGS OF FACT

1. The City of Manchester (Respondent) employs persons to carry out the functions of municipal government within the Manchester Public Library and therefore is a public employer within the meaning of RSA 273-A:1 X.

2. The Teamsters Local 633 of New Hampshire (Petitioner) seeks to become the exclusive bargaining representative of a proposed bargaining unit comprised of certain employees of the Respondent who perform work at the Manchester Public Library in the positions of Assistant Librarian, Librarian I, Librarian II, Librarian Clerk I, Librarian Clerk II, Information Support Specialist, and Office Assistant.

3. It was agreed by the parties that in the event the PELRB found the Union's petition to have been completed and timely filed, the composition for the bargaining unit would consist of those positions listed in Finding #2, above.

4. It was agreed by the parties that the positions of Librarian I and Librarian II are professional positions and would vote separately in the event the PELRB ordered an election..

5. It was also stipulated that the budget submission date for the City is March 31.

6. At all relevant times, John Brisbin was the Library Director and had been for the last ten years.

7. At all relevant times, Thomas D. Noonan was the Business Agent and a union organizer for Teamsters Local 633 and had been for approximately twenty years.

8. Prior to October 12, 2001, Mr. Brisbin learned from an employee that there was an effort underway to "unionize" workers employed within the library.

9. During the morning of October 12, 2001 at approximately 9:15 A.M. Mr. Noonan went to the Manchester Public Library and called upon Mr. Brisbin. His purpose in so doing was to discuss a proposed Petition for Certification of a bargaining unit that he planned to file with the PELRB. (Respondent's Exhibit A).

10. Mr. Brisbin was either not present or was unavailable to talk with Mr. Noonan on that occasion. Mr. Noonan left what he characterized as a "courtesy" copy of the proposed Petition and his business card (Respondent's Exhibit B) for Mr. Brisbin with Debbi Marchand, a library employee, with an oral request that Mr. Brisbin call him to discuss its contents.

11. Upon receiving the documents and the request for a response to the Union from Debbi Marchand, Mr. Brisbin faxed a copy of the Petition (Respondent's Exhibit A) to the City Solicitor later in the morning. Mr. Brisbin did not attempt to call or otherwise contact Mr. Noonan on October 12, 2001 either to discuss the substance of the Petition or to notify him that he had transferred responsibility to do so to anyone else within the city administration.

12. The copy of the Petition left with Mr. Brisbin on October 12, 2001 contained a blank space at Item #6. (See Respondent's Exhibit A) that called for an indication of whether the parties agreed to the composition of the unit or not. It also stated the budget submission date as "December".

13. Mr. Noonan returned directly to his office on October 12, 2001 to await a response from Mr. Brisbin. After waiting approximately an hour, Mr. Noonan completed the blank space on the form indicating that there was not agreement to the proposed Petition and prepared to file that Petition with the PELRB.

14. Later that day, Mr. Noonan forwarded the completed Petition for Certification to the PELRB (Union Exhibit #2) and sent a copy to Mr. Brisbin by certified mail (Union Exhibit #3). The Petition was received and deemed filed by the PELRB on October 15, 2001. Mr. Brisbin received a copy of this filed Petition by certified mail on or about October 15, 2001 and again testified that he faxed it on to others. He did not call or respond to Mr. Noonan on that occasion.

15. Sometime after Mr. Brisbin's copy of the initial petition (Respondent's Exhibit A) was faxed to the Solicitor, David Hodgen, the city's Chief Negotiator, reviewed it. Mr. Noonan testified that Mr. Hodgen told him at a later time that the contents had been discussed and considered by management.

16. On or about October 25, 2001 Mr. Hodgen forwarded a list of incumbent library employees to the PELRB and on or about October 30, 2001 Mr. Hodgen, on behalf of the City of Manchester, filed its exceptions to the Petition.

17. On November 6, 2001, the PELRB issued a pre-hearing Order and a Notice of Hearing to the parties announcing a scheduled hearing for November 16, 2001. Upon notice from the Union of its unavailability on that planned date, a new hearing date of November 29, 2001 was scheduled with the agreement of both parties.

18. In a letter, dated November 9, 2001, Mr. Noonan wrote to Mr. Brisbin (Union Exhibit #1) recounting his actions in filing the Petition and soliciting any discussion Mr. Brisbin would offer in connection with the formation of the bargaining unit.

DECISION AND ORDER

The legislative mandate of the Public Employee Labor Relations Board (PELRB) includes the authority to consider petitions for the certification of bargaining units (RSA 273-A:10), determine appropriate composition of bargaining units (RSA 273-A:8, I) and thereafter to exercise authority to order elections, if appropriate (RSA 273-A:10, I(b). Where the parties involved cannot agree as to the contents of a filed Petition for Certification on their own, the PELRB conducts a hearing for such purpose, makes a decision and then issues an appropriate order of election under Pub 303.01. In the instant matter, the parties have conditionally agreed to the unit composition, pending a hearing on issues raised by the City involving the manner and timeliness of certain actions undertaken by the Union in connection with its filing of the Petition for Certification.

The chronology of the parties' actions is as follows. Some time prior to October 12, 2001 a subordinate library employee told the Library Director learned of the effort by the Union to "unionize" certain library employees. On October 12, 2001 the Library Director learned from a subordinate library employee of Mr. Noonan's visit to the library and his failed attempt to speak with the Library Director. She gave the "courtesy copy" of the planned Petition and business card (Respondent's Exhibit B) left by Mr. Noonan to the Library Director. The Library Director did not attempt to contact the Union to have a substantive discussion or to inform the Union that the responsibility was being passed on by him to someone else. He did fax a copy of the petition that was left with him to the City Solicitor. Mr. Noonan returned to his own office after dropping off the "courtesy" copy and later completed the Petition indicating at Item #6 that unit composition had not been agreed to by the City. That final version of the Petition for Certification was filed with the PELRB and received by the Library Director on or about October 15, 2001. Again the Library Director faxed a copy of this completed petition to the City Solicitor's office and did not respond to Mr. Noonan to have a substantive discussion or to inform him that the responsibility was being passed on to someone else.

On October 15, 2001 a "Notice of Filing" was forwarded by the PELRB, in its normal course, to the Library Director as the named representative of the City appearing on the Petition for Certification. On October 25, 2001, the City's Chief Negotiator sent a list of all current employees to the PELRB and sent copies to the Library Director and to Mr. Noonan. The letter also made reference to the City's planned exceptions to be filed relating to the professional status of some of the employees proposed for inclusion in the proposed bargaining unit. No other basis for exceptions was contained in that letter. On October 30, 2001 the City filed its exceptions to the Petition for Certification that raised several issues which have since been resolved by the parties prior to the conclusion of the hearing on the City's exceptions as described above in the BACKGROUND section of this decision. On November 6, 2001, the PELRB issued a pre-hearing order scheduling a hearing between the parties for November 16, 2001. Thereafter, the Union informed the PELRB that it was not available on that day and, with the agreement by the City, the hearing was rescheduled until November 29, 2001. On November 9, 2001 Mr. Noonan sent a letter to the Library Director soliciting his interest in discussing unit composition. (Union Exhibit #1). The hearing was conducted on November 29, 2001, however, the record was left open until December 12, 2001 to receive the parties' respective legal memoranda on two of the several issues addressed by the City in its Exceptions #5 and #6 to the Union's Petition for Certification. Those two issues are whether or not the PELRB should dismiss the Union's Petition for failure to be filed in a timely fashion and whether or not a written notice of "intent to bargain" from a union not yet certified as the exclusive representative of a bargaining unit is valid under the requirements of RSA 273-A:3, II(a).

At the outset, it should be noted that when the dust settled in the PELRB boardroom following pre-hearing discussions between the parties and the Hearing Officer, there was no disagreement as to the budget submission date, no disagreement as to the employee position titles being petitioned for and no disagreement as to unit composition in the event the Petition was deemed by the Hearing Officer to be properly

filed. Further, the PELRB acknowledged the existence of a sufficient showing of interest by petitioning employees in excess of the required 30 percent showing of the proposed unit as required by RSA 273-A:3(a). Lastly, the parties had agreed to those positions that were professional and those that were not classified as such and had agreed that in the event of an election the two groups would vote separately. These points of agreement were obtained within a period of approximately 15 minutes in the presence of the Hearing Officer.

The remaining matters for determination in this decision regard the adequacy of the Union's Petition for Certification. The first question to be answered is whether the Union filed a complete petition with the PELRB. During testimony, the City realized that they were in possession of two versions of the Petition, one drafted prior to the Union's attempt to meet with the Library Director, *i.e.* the "courtesy copy", and the completed final version filed with the PELRB and required to be sent to them by the petitioning Union. The "courtesy copy" of the intended Petition for Certification (Respondent's Exhibit A) left with the Library Director, was incomplete because Item #6 that required an indication of agreement between the parties as to unit composition was blank. That blank was completed on the final version of the Petition that filed with the PELRB on October 15, 2001. (Union Exhibit #2) A copy of this completed Petition was provided to the Library Director by certified mail sent on October 12, 2001. A review of the latter and the original on file with the PELRB establishes that the Petition for Certification filed by the Union was complete.

The next question is whether or not the Union filed its Petition for Certification in a timely manner. Administrative rule Pub 301.01(a) expressly states, "A petition for certification as the exclusive representative of a bargaining unit having no certified representative may be filed at any time." In this case there was no certified representative of the proposed unit on October 15, 2001 when the Union filed its Petition for Certification. Further, the filing date of the Union's petition falls on the 167th day before the City's qualifying budget submission date which is March 31st of each year. That being the case, the Hearing Officer does not find that it was filed, "so close to the budget submission date of the [City] that the board cannot reasonably conduct the election called for in the petition within 120 days of the budget submission date." Pub 301.01(b). However, in the instant case, an election could not be conducted prior to the 120 day period due to the existing scheduling demands upon the PELRB and actions of both parties, including the continuance sought by the Union and agreed to by the City.

As was noted at the beginning of this decision, there was no disagreement between the parties as to the composition of the proposed bargaining unit or as to professional employees shall be segregated for purposes of an election. Both representatives are experienced in their respective professions and in their practice before the PELRB. Both are cognizant of the controlling statute and administrative rules. If more effort had been expended by either of them at the outset of the petition process, an agreed unit composition could have been filed and an election conducted that would have allowed the parties sufficient time to collectively bargain in furtherance of the governing statute's purpose. That purpose may be simply stated as fostering "harmonious and

cooperative relations" between public employers and their employees. The legislature felt that type of labor relationship could be best achieved, in part, by " I. Acknowledging the right of public employees to organize and to be represented for the purpose of bargaining collectively." (Statement of Policy. 1975, 490:1 eff. Dec. 21, 1975).

For its part, the Union could have made an earlier and more ambitious effort to obtain written consent to its petition mindful that if its petition were contested, the PELRB's "Notice of Filing" would allow fifteen days before the City would be required to file their answer if they took the maximum amount of permissible time to do so. The City took that amount of time to file its written exceptions with no intervening effort to contact the Union. For the City's part, had it revealed its actual intent to agree with the unit composition, an amended and agreed unit composition Petition for Certification could have been filed without delay and an election arranged on a schedule that would have served the governing statute's purpose. This would have avoided the expenditure of time and financial resources of the City, the Petitioner's own employees and those of the State of New Hampshire. The City should have responded in some timely manner to Mr. Noonan's contact visit on October 12, in order to discuss unit composition and other issues contained within the Petition.

Instead, now categorized as a "contested" matter, the processing of the Petition was slowed by other administrative events including the scheduling of a contested hearing, which, at a minimum cannot be scheduled without ten days' notice to the parties because it is evidentiary hearing. Pub 201.07. Thereafter, the evidence presented at the hearing must be weighed, time must be allowed for post-hearing briefs to be prepared and filed, a determination must be made, and a decision must be written.

Thereafter, if an appropriate unit is determined, a notice of election will initiate another sequence of events (See generally Pub 303) that includes the compilation of a voting list by the employer, the conduct of a pre-election conference to set polling places and election day rules, and the conduct of a bargaining agent election. All of these actions take time to accomplish even in the most efficient circumstances. In this particular case, the Union was unable to be available for the originally scheduled contested hearing that caused a delay of two additional weeks. Ultimately, the hearing as described within this decision was conducted on November 29th, the 121st day prior to the budget submission date.

After considering the full set of circumstances accompanying this matter, the Hearing Officer finds that the Union's petition filed with the PELRB on October 15, 2001qualifies as timely filed on the basis of previous PELRB reasoning that, "while 120 days before budget submission date serves as a minimum time limit, there is no maximum time limit." (See Board Decision # 1996-117, Hudson Federation of Teachers AFT, AFL-CIO v. Hudson School Board).

However, the Hearing Officer does not find, from the facts as presented in this case, that proper notice of intent to negotiate, pursuant to RSA 273-A:3, II(a) requiring at least 120 days' notice, was given to the City. The proverbial cart, *i.e.* notice of intent to

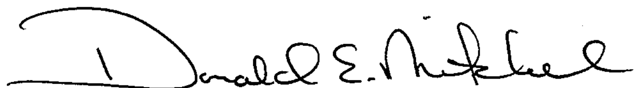
negotiate, was put before the horse, *i.e.* a determination by the PELRB that it had been certified as the exclusive bargaining representative. To accept the Union's position regarding a more general interpretation of the word "party" appearing in RSA 273-A:3, II(a) would empower a broad class of individuals, natural and otherwise, who were not anticipated by the legislature to be involved with ensuing negotiations with a public employer to cause that public employer to undertake preparations for negotiations that may never take place. The obligation to negotiate, as expressed in RSA 273-A:3, I, can only attach to public employers and "the employee organization certified by the board as the exclusive representative". In the comprehensive collective bargaining scheme embodied in RSA 273-A, there is no obligation upon any other "party" to negotiate. It follows that without a certified exclusive representative in existence, proper notice can not emanate from any source to the City. Therefore, the City cannot be compelled to negotiate cost items for inclusion in the present budget cycle. Good faith negotiations of other items remain an obligation of the public employer and the exclusive representative following an election and certification of the Union as the exclusive bargaining representative and subsequent proper notice from the Union to the City.

In light of the previously referenced conditional agreement between the parties as to the composition of the unit upon a finding of the petition being properly before the PELRB, the bargaining unit to be submitted for certification shall consist of all employees in the classifications of Assistant Librarian, Librarian I, Librarian II, Librarian Clerk I, Librarian Clerk II, Information Support Specialist, and Office Assistant.

An order of election shall issue accordingly.

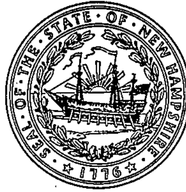
So Ordered.

Signed this 23rd day of January, 2002.



Donald E. Mitchell, Esq.
Hearing Officer

NH Supreme Court affirmed Decision No. 2002-007 on 4-4-2003, Slip Op. No. 2002-341 (NH Supreme Court Case No. 2002-341).



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire

Petitioner

v.

City of Manchester Public Library

Respondent

Case No. M-0786

Decision No. 2002-036

CORRECTED DECISION

CROSS MOTIONS FOR RECONSIDERATION
MOTION TO STAY ELECTION PROCEEDINGS

The Board, meeting at its offices in Concord, New Hampshire, on March 12, 2002, took the following actions:

1. It reviewed the Union's Motion for Reconsideration filed on February 22, 2002; the City's objections thereto filed on March 1, 2002; the City's Motion to Stay Election Proceedings filed January 31, 2002 and supplemented with an additional filing on March 1, 2002; the Union's objections thereto filed on February 5, 2002 and March 5, 2002, respectively; the City's Request for Review filed February 21, 2002; and the Union's objections thereto filed on March 4, 2002.

2. It examined the petition for certification filed by the Union on October 15, 2001, the City's responsive letter dated October 25, 2001 and its exceptions filed on October 30, 2001.

3. It reviewed the hearing officer's decision (Decision No. 2002-007)* in this matter dated January 23, 2002 and took notice of those elements which were agreed and which were not agreed, it being noted that unit composition was generally agreed and that the parties agreed to use the process of professional-nonprofessional voting procedures to address the issue of joinder, or lack thereof, under RSA 273-A:8 II.

4. It DENIED the Union's Motion for Reconsideration; it DENIED the City's Request for Review; it DENIED the City's Motion to Stay Election; and it DIRECTED the election to proceed as scheduled on March 25, 2002.

So Ordered.

Signed this 12th day of March, 2002.

JACK BUCKLEY
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Richard W. Roulx and Daniel Brady present and voting.

* Typographic error corrected to reflect Decision No. 2002-007 instead of Decision No. 2002-027 inadvertently reflected in original.