

SUPREME COURT OF NEW HAMPSHIRE

Appeal of City of Manchester

149 N.H. 283 (2003) · Decided April 4, 2003

SUMMARY

The New Hampshire Supreme Court affirmed the Public Employee Labor Relations Board’s certification of a bargaining unit for City of Manchester Public Library employees. The court held that the timing restrictions in N.H. Admin. Rules, Pub 301.01(b), applied only when a bargaining unit already had a certified representative. The court also held that the appealing party must initially bear the full reasonable cost of preparing the appellate transcript, although the agency need not arrange the transcription.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Brock, C.J.; Broderick, J.; Duggan, J.; Nadeau, J.
JURISDICTION	New Hampshire
DECIDED	April 4, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Manchester appealed a decision of the New Hampshire Public Employee Labor Relations Board granting the Union's petition for certification and addressing the preparation of the appellate record.
STANDARD OF REVIEW	The court deferred to the PELRB's factual findings and would not set aside its decision absent an erroneous ruling of law unless the appealing party demonstrated by a clear preponderance of the evidence that the order was unjust or unreasonable. The court reviewed the PELRB's interpretation of its regulations for consistency with the regulatory language and purpose.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire.
PARTIES	City of Manchester v. Teamsters Local Union No. 633 of New Hampshire

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QUESTIONS PRESENTED

1. Whether New Hampshire Administrative Rules, Pub 301.01(b), which restricts certification petitions filed close to a public employer's budget submission date, applies when the bargaining unit has no certified representative.
2. Whether the PELRB's policy requiring the moving party to arrange and pay for preparation of an appellate transcript was binding when the policy had not been adopted under the rulemaking procedures of RSA chapter 541-A.
3. Whether the moving party in an RSA chapter 541 appeal must initially bear the full reasonable cost of preparing the transcript for inclusion in the appellate record.

HOLDINGS

1. Rule 301.01(b)'s timing constraints apply only when the bargaining unit already has a certified representative. A petition to certify a bargaining unit with no certified representative may be filed at any time without regard to the contract-bar timing limits.
2. The PELRB's policy requiring the moving party to arrange for and bear the cost of preparing a transcript was not binding on the City because the policy established a procedure binding on persons outside the agency and had not been adopted through the rulemaking procedures required by RSA chapter 541-A.
3. The moving party in an RSA chapter 541 appeal must initially bear the full reasonable cost of preparing a transcript for inclusion in the appellate record, although RSA 541-A:31, VII does not require the moving party to arrange for the transcription.

KEY QUOTATIONS

“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).” (149 N.H. at 287)

“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.” (149 N.H. at 288)

“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.” (149 N.H. at 290)

FACTUAL BACKGROUND

The Union filed a petition on October 15, 2001, to certify a bargaining unit of City Public Library employees that had no certified representative. The City's budget submission date was March 31, 2002, and the City argued that the petition was untimely because an election could not be held at least 120 days before that date. The PELRB granted the petition, an election was held on March 25, 2002, and the PELRB issued a certificate of representation. The PELRB also required the City, as the moving party, to arrange and initially pay for preparation of the transcript for the appellate record under an agency policy that had not been adopted through rulemaking.

PROCEDURAL HISTORY

The Union petitioned the PELRB for certification of a bargaining unit of City Public Library employees. The hearing officer granted the petition, the PELRB denied the City's request for review and motions to stay, the election was held, and the PELRB issued a certificate of representation. The PELRB later denied the City's objections to the election and motion for reconsideration. The City appealed to the New Hampshire Supreme Court.

DISPOSITION

affirmed

CASES CITED

- Appeal of State of N.H., 147 N.H. 106, 108 (2001)
- Appeal of Land Acquisition, 145 N.H. 492, 495-96 (2000)
- N.H. Dep't of Resources and Economic Dev. v. Dow, 148 N.H. 60, 64 (2002)
- Asmussen v. Comm'r, N.H. Dep't of Safety, 145 N.H. 578, 592-93 (2000)
- Petition of Dunlap, 134 N.H. 533, 547-49 (1991)
- K & J Assoc. v. City of Lebanon, 142 N.H. 331, 333 (1997)
- Appeal of Naswa Motor Inn, 144 N.H. 89, 90 (1999)