



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND :
MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL :
NO. 68 (Police & Fire Dept. Employees) :
Petitioner :
and :
TOWN OF PLYMOUTH, NEW HAMPSHIRE :
BOARD OF SELECTMEN :

CASE NO. A-0477

DECISION NO. 82-13

APPEARANCES

Representing the Petitioner, AFSCME:

James C. Anderson, Executive Director, Council 68

Representing the town of Plymouth:

Daniel D. Crean, Esq., Counsel
Thomas F. Rankin, Administrative Assistant

BACKGROUND

This matter came on for hearing before the undersigned hearing officer on January 20, 1982, pursuant to a petition for certification of a bargaining unit consisting of the employees of the fire and police departments in Plymouth, New Hampshire. The petition was supported by the necessary signature cards.

The town of Plymouth raises two preliminary objections to the jurisdiction of this Board to entertain the petition. First, the Town asserts that the representative of the proposed unit has failed to negotiate with the Town concerning the composition of the unit. Although this objection might be well taken in appropriate circumstances, where, as here, the Town has consistently maintained their position in opposition to the combination of the police and fire departments, and without such combination neither department has sufficient employees to compose a unit, the representative failure to so negotiate can and will be refused.

Second, the Town asserts that the prior decision of this Board denying a proposed unit in Plymouth, New Hampshire, consisting of the police department, fire department, and highway department (Decision 81-24), is a bar to the institution of this petition. This objection is not well taken as the current petitions does not include the highway department, and thus different issues are presented:

On the merits of the petition, the Town objects to the combination of the police department and the fire department for purposes of creating a unit, and further objects on supervisory grounds to the inclusion of the police sergeant, deputy fire chief, and director of ambulance service in the unit.

We begin all unit determination cases with the recognition that the basic premise of RSA Chapter 273-A is to permit public employees to organize, and all doubts raised concerning the propriety of organization should be resolved consistently with a presumption in favor of collective bargaining. This brings us to the key question in this case as to whether the police department employees and fire department employees may be combined for purposes of creating a bargaining unit of sufficient size to be recognized in this State.

FINDING OF FACTS

-- Although the town of Plymouth has no history of collective negotiations with any of its employees, it is apparent from the testimony that the employees of both departments perform public safety functions, operate on 24 hour rotating shifts, are uniformed, and have similar salary structures. In addition, there was testimony supporting the proposition that the two departments had a self-felt community of interest.

-- Witnesses presented by the Town initially testified that they felt that the combination of the two departments would result in certain division of loyalties. Upon further questioning, it became apparent that this objection went to the fact of any union, be it in one department or both departments, and the Town's feeling that the existence of a union would impede effective and efficient operation of the department. In view of the legislative decision manifested in RSA Chapter 273-A, this is no longer a legitimate concern on the part of a municipality.

-- On this basis, the hearing officer has concluded that the requisite community of interest is present to permit a combination of the police and fire departments for the purposes of forming a bargaining unit.

-- With respect to the Town's objection to the supervisory capacity of the police sergeant and the deputy fire chief, it was clear from the testimony presented by both sides that the employee in each of these two positions is no more than a working foreman who has certain responsibilities beyond the other employees, but not sufficient to be categorized as supervisory as defined in RSA Chapter 273-A. In fact, it was apparent that certain patrolmen and fire-fighters on certain shifts assume these same duties and responsibilities.

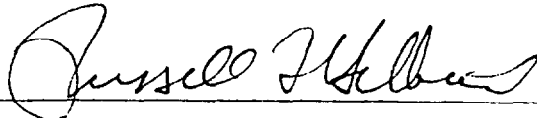
-- With respect to the director of ambulance service, the hearing officer finds that this position does stand in a different light, and has a unique relationship to the Town management in terms of budget preparation and overseeing a department. Thus this employee will be excluded from the unit, be it on supervisory or confidential grounds.

The foregoing shall constitute the findings and rulings of the hearing officer in accordance with the rules of this Board.

DECISION AND ORDER

After consideration of all testimony, the petition is hereby granted and a bargaining unit composed consisting of the employees of the police department and fire department, as follows:

- A. Secretary, Patrolmen, Investigative Officer, Sergeants Firefighters and Deputy Fire Chief.
- B. Excluded from the unit: Chief of Police, Chief of the Fire Department and the Director of Ambulance Service.
- C. Election in accordance with RSA 273-A:10 and the Board's Rules and Regulations, Section 2.4 will be held as expeditiously as possible, and
- D. Order of Election enclosed.



RUSSELL F. HILLIARD, ESQ., Hearing Officer
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 4th day of March, 1982.