



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL #68, AFL-CIO

Petitioner :

and :

TOWN OF DERRY, NEW HAMPSHIRE :

Respondent :

CASE NO. A-0483

DECISION NO. 82-74

APPEARANCES

Representing Council 68, AFSCME:

Edward Edwards

Representing the town of Derry:

Gary Wulf

Also in Attendance:

Ann Marie Foote
Edward Garon
Malcom MacIver
Scott Gerrish
Paul Collette

Kandy Frak
Ed Anderson
Rodney Bartlett
Janet Conroy
Eunice Campbell
Karen Feldscher

BACKGROUND

On July 7, 1982 the PELRB received a petition from AFSCME Council 68 for certification of a bargaining unit representing the Town of Derry Administrative Support Staff. The petition sought eight position titles and a total of fifteen employees.

The Town, by letter dated July 19, 1982 received July 26, 1982 by the PELRB, filed its exception noting non receipt of the board's "official notice of filing."

A hearing was held in Derry on October 22, 1982 at 2:30 p.m.

FINDINGS AND OPINION

1. The petition is incomplete in that it did not specify the "number of employees in each classification" as required by PELRB Rule 1.2 (b).
2. The exception filed by the town is unacceptable in that it does not contain a "clear and concise explanation of any factual or legal reasons why the Board should not entertain the petition," as required by PELRB Rule 1.2 (e).
3. The exceptions filed by the town are untimely in that the petition was received by the Board on July 7, 1982 and the exception was received on July 26, 1982. PELRB rule 1.2 (e) requires exceptions to be "filed within fifteen (15) days of the date the original petition is filed." PELRB rule 9.2 (b) states "filing shall be receipt at the office of the Board." I find no mention in RSA 273A or PELRB rules of an "official notice of filing" from the Board. The time limitation is triggered by the "date the original petition is filed," PELRB rule 1.2 (e), and the delivery as defined in PELRB rule 9.2 (b) of a copy of the petition to the public employer by the petitioner as set forth in rule 1.2 (d). Any "Notice of Filing" sent out by the Board is complimentary, not controlling on applicable deadline trigger mechanisms.
4. As the designee of the Board under RSA 273-A 81 PELRB rule 1.2 (f), 2.2, 2.3 and 5 an inquiry was conducted to determine the appropriate bargaining unit.
5. Six (6) positions and employees are uncontested. They are:
 - Assessor's Office Secretary - 1
 - Building Inspector's Clerk - 1 on leave of absence
 - Recreation Department Secretary - 1
 - Finance Office Clerks - 3
6. An employee on an official leave status is an eligible position and employee under RSA 273-A 1 X.
7. The Town of Derry has a six month probationary period for new employees.
8. Under RSA 273-A 1 X (d) five (5) employees are prohibited at this time from being considered in the petition. See Town of Conway vs. N.H. PELRB Case No. 80,372 dated May 7, 1981. The employees are:
 - Town Clerk's Office Clerk - 1 until 11/17/82
 - Assessor's Office Clerk - 1 until 2/23/83
 - Selectman's Office Receptionist - 1 until 12/28/82
 - Welfare Clerk - 1 until 1/6/83
 - Building Inspector's Clerk - 1 temporarily filling position for an individual on leave of absence (see findings 5 and 6).
9. University System of N.H. v. State of N.H. et al, Case Nos. 7579 and 7580, February 18, 1977. Standardized confidential exclusion to those "who assist(s) and act(s) in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations."

10. In the Town of Derry the administration is presently run by the Chief of Police, the Director of Public Works and the Building Inspector with the advice and consent of the Board of Selectmen.
11. LMR are currently handled by the Highway Department through the Director of Public Works.
12. The secretary to the Director of Public Works handles all correspondence on the matter of LMR and has access to the files on LMR. Therefore, under the present form of government in the Town of Derry the secretary to the Director of Public Works (Highway Department) is excluded from the petitioned bargaining unit.
13. The secretary to the Building Inspector shares the same office space and file access as the secretary to the Director of Public Works. Proximity is not confidentiality.
14. The secretary to the Building Inspector does not act or assist in a confidential manner to the persons who formulate, determine and effectuate management policies in the field of labor relations. The town management by the Chief of Police, the Director of Public Works and the Building Inspector delegates LMR to the Director of Public Works, in conjunction with the Board of Selectmen.
15. The Assistant or Deputy Town Clerk and Tax Collector petitioned for as clerks are not professional under RSA 273-A 1 IX.
16. The position petitioned for as Finance Department Clerk now titled Finance Office Manager required specialty experience in accounting but does not require a Certified Public Accountant or a Public Accountant which would indicate a discipline customarily acquired in a formal program of advanced study. I find the position to have specific requirements but not a professional position in that any consistent exercise of discretion and judgement would occur at a higher level in establishing the parameters and programing for the position. Further, there is no testimony that this position will exercise supervisory discretion over any members of the proposed bargaining unit.

RECOMMENDATIONS

I recommend that the Board:

1. Determine the appropriate proposed bargaining unit consisting of 10 individuals. They are:
 - A. Deputy Town Clerk - 1
 - B. Deputy Tax Collector - 1
 - C. Assessor Secretary - 1
 - D. Building Inspector's Clerk - 1 on leave of absence
 - E. Building Inspector's Secretary - 1
 - F. Recreation Department Secretary - 1
 - G. Finance Office Clerks - 3
 - H. Finance Office Manager - 1

2. Note, four employees on probation are filling positions which should be included in the bargaining unit. They are:
 - A. Town Clerk Office Clerk - 1
 - B. Assessor's Office Clerk - 1
 - C. Selectmen's Office Receptionist - 1
 - D. Welfare Clerk - 1

See finding 8 for date each becomes eligible to vote.

3. Uphold the findings and decisions above.
4. Order an election under PELRB supervision as set forth in RSA 273-A:10 and Rule 3.



RUSSELL J. VERNEY, HEARING OFFICER

Signed this 5th day of November 1982.