



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW  
HAMPSHIRE, SEIU, LOCAL NO. 1984

Petitioner

v.

SULLIVAN COUNTY COMMISSIONERS,  
SULLIVAN COUNTY CORRECTIONAL FACILITY

Respondent

CASE NO. S-0378

DECISION NO. 86-26

#### APPEARANCES

##### Representing the State Employees Association:

William Briggs, Esq., Staff Attorney

Ward P. Freeman, Municipal & County Representative, SEA

##### Representing Sullivan County:

Alan Hall, Esq., Counsel

Sandra LaPointe, Administrator, Corrections Department

##### Also in attendance:

Brad Richard, Sullivan County

Lawrence Beam, Shift Supervisor

Laurindo Mendes, Shift Supervisor

Tom Hersey, Student Intern, SEA

#### BACKGROUND

The State Employees Association of NH, SEIU, Local 1984 (SEA) filed a petition for certification to include all full-time and permanent part-time positions; i.e., Correctional Officers, Control Center Operators, Nurse and Correctional Officers/Shift Supervisors employed at the Sullivan County (County) Correctional Facility in Unity, N.H.

Counsel for the County and SEA Representatives attempted to resolve the unit (exception to the inclusion of Shift Supervisors filed by the County), however agreement could not be reached. In an effort to expedite the process, the parties agreed to proceed with a pre-election conference and election conducted by the Public Employee Labor Relations Board (Board).

Election was held on site on March 7, 1986 and resulted as follows: Total proposed unit numbered eighteen (18) which included five (5) shift supervisors. All employees cast ballots - SEA received nine (9) votes; four (4) votes were cast for "No Representative" and the five (5) shift supervisors' ballots

remained sealed pending a unit determination hearing by the Board.

Hearing was held in the Board's office in Concord on April 3, 1986 with all parties represented.

#### FINDINGS OF FACT

The petition filed by SEA met all the requirements under RSA 273-A:10.

Testimony and evidence presented at the hearing established that under the prior Administrator, shift supervisors were given limited authority but that under the current administration, they exercise more supervision and are given more authority.

Shift supervisors attend staff meetings; meetings with all employees; assign employees to schedules; make replacements; call in additional personnel when required; approve requisitions; implement staff training programs; do employee testing; evaluate officers and discuss their performance with the Administrator; and, authorize overtime when necessary.

Additional benefit, such as additional vacation time, is given to shift supervisors for their added duties.

Shift supervisors have the authority as the person in charge nights and weekends, in the interest of their employer, the County, to exercise independent judgment and take appropriate action necessary for the efficient operations of the facility.

#### DECISION AND ORDER

After reviewing the evidence presented at hearing, the Board issued the following oral order, via telephone, to the parties:

Shift supervisors are supervisory under the meaning of 273-A and cannot belong to the same unit over employees they supervise and must be excluded from the unit at the Correctional Facility of Sullivan County.

Certification as exclusive representatives for correctional officers, control center operators and nurse at the Sullivan County Correctional Facility will be issued to the State Employees Association of New Hampshire, SEIU, Local No. 1984, effective as of March 7, 1986.



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JOHN M. BUCKLEY, Alternate Chairman  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 9th day of June, 1986.

Chairman John M. Buckley presiding. Board Member Richard W. Roulx and Chairman Buckley voting for exclusion of shift supervisors; Alternate Board Member Daniel Toomey dissenting. Also present, Executive Director Evelyn C. LeBrun.

Member Toomey's dissenting opinion follows:

Member Daniel Toomey dissenting:

I disagree with the majority in this case.

The overriding purpose of RSA 273-A is to ensure the right of public employees to organize together for the purpose of bargaining collectively. There are limitations in the law and accommodation for the formation of separate units within a community of interest; however, these exceptions were not meant to be used to interfere with the main purpose of the law and to discourage those with supervisory duties from bargaining collectively.

Upholding the Sullivan County Commissioners' challenge by excluding the five shift supervisors from the bargaining unit at the Correctional Facility effectively takes away their right to bargain collectively and to be represented by a union because of the 10-employee minimum requirement under RSA 273-A:8, I(d).

Excluding the shift supervisors from the newly formed unit should be done only for extremely compelling reasons. The reasons set forth by Counsel for the County did not compelling and seemed to come more from anxieties stemming from limited knowledge of the realities of the collective bargaining process. This is understandable since collective bargaining will be new to the County and concerns such as, "will it be possible for a supervisor to discipline or turn in a fellow union member?" or, "can any possible different interests of the shift supervisors be addressed when negotiating a contract?" are not unusual and can be expected. These concerns, although common, are unwarranted. It is quite possible for one union member to discipline or turn in another union member and there are long standing adversarial procedures for resolving the resulting disciplinary case. It is quite possible to address the special needs of employees with varying responsibilities in a contract. Additionally, it is quite possible to delegate responsibility to an employee who belongs to a union.

The key to this case seems to be in RSA 273-a's standards for determining a bargaining unit which states, "Persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." What constitutes "significant exercise of discretion"? Supervisory authority consists of the power to hire, fire, promote and upgrade, demote and transfer. Do the shift supervisors have those powers? Do they have significant input into them? It is given that the power to hire, fire, promote and demote rests by statute with the County Commissioners. Overall policy decisions are also made at that level and at the level of Superintendent/Administrator. The powers of the next in command, the Correctional Administrator appear to be largely advisory in setting overall policy and in the areas of hiring, firing, promoting, etc.

The shift supervisors' practice of administering and grading a 8-question multiple choice test cannot in any way be considered as having any "significant discretion" in the hiring process. Sometimes being asked for a verbal impression of a potential new employee, impression that they have gained during a tour of the facility, does not constitute significant input into the hiring process either. This is even more the case since this impression was solicited by their supervisor whose powers in this area consisted of making recommendations to her supervisor, who truly had significant discretion in the hiring process.

Having one's suggestion used, as was the case in shift supervisor Berquist's test, in and of itself does not constitute supervisory duties.

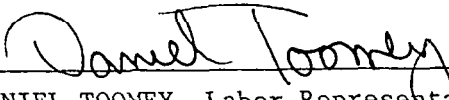
The responsibility of calling one's supervisor in an emergency situation, in the case of the Correctional Facility, appears to be more a symbol of subservience rather than one of signification discretion. An example raised was of a potentially dangerous situation in which someone was heard, or noticed, walking on the roof of one of the buildings of the prison; the fact that the shift supervisor did and was expected to call his supervisor before he called the Sheriff's Dept. clearly points that out. It makes me glad that I don't live near that facility; it is likened to requiring a tenant whose house is on fire to call his landlord before calling the Fire Dept. The disturbing and significant point raised by the bringing out of this incident is that neither side thought it to be the least bit unusual.

The only disciplinary powers the shift supervisors had was to send a fellow employee home who had the smell of alcohol on his breath. In this case it is the practice to call the Administrator of Corrections at home that night or weekend to report it instead of waiting until she came to work the next day or after the weekend was over. Any other disciplinary input cited was simply the act of putting in a report and making recommendations. In fact, shift supervisor Beam was officially reprimanded for exercising independent judgment in disciplining a fellow employee.

The shift supervisors did evaluation forms rating their co-workers but those forms only went as far as Ms. LaPointe, the Correctional Administrator, whose powers again were only advisory.

The shift supervisors at Sullivan County Correctional Facility, in my view, are low level working supervisors. Ninety-five percent of the time they do the same tasks as their co-workers, the correctional officers whom they supervise and even work shifts in the capacity of correctional officers if a more senior shift supervisor is scheduled on the same shift. Another indication of their status is that they "punch a timeclock" in contrast with their supervisor, Ms. LaPointe, who is "on salary".

If the shift supervisors at the Facility did in fact have "significant judgment in the exercise of supervision" (and it may well be to the advantage of the facility if they did), then the County would be right in seeking their exclusion from the bargaining unit. But, this does not seem to be the case and as a result of that and as a result of the great personal importance to the five individuals' right to join an employee organization, I find it necessary to go on record as dissenting from the majority opinion and I voted for inclusion of the shift supervisors in the unit.

  
DANIEL TOOMEY, Labor Representative