



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 93

Petitioner

v.

CITY OF SOMERSWORTH, N.H.

Respondent

CASE NO. A-0534
DECISION NO. 87-30

APPEARANCES

Representing Council 93, AFSCME:

Harriett Casey, Staff Representative

Representing the City of Somersworth:

Philip L. Münck, City Manager

BACKGROUND

AFSCME, Council 93, petitioned for a unit of all administrative support staff within the City of Somersworth, including clerks, secretaries, secretary/dispatcher, asst. finance director, deputy tax collector, code enforcement officer, computer operator/bookkeeper and library aide.

The City of Somersworth (City) objected to the unit as proposed, specifically to the inclusion of the code enforcement officer on the basis that the position necessitated supervisory authority over one of the clerks; that the position is salaried, professional and exempt from the Fair Labor Standards Act. The City also objected to the inclusion of the Water Department clerk alleging that the agency is semi-autonomous; governed by a Board of Water Commissioners who has the right to hire its own employee and as such, not directly under the City Manager.

A unit determination hearing was held in the Board's (PELRB) office on February 19, 1987 with both parties represented.

FINDINGS OF FACT

Several exhibits were presented by the City illustrating the history and laws of 1891 on the authority of the Water Department and the taking of water; the authority of the Council to give the Water Commissioners such powers and duties as deemed proper to fix compensation; and, other miscellaneous provisions.

The Administrative Code effective January 1, 1974 gave jurisdiction to the City Manager over "all" departments.

The Code Enforcement Officer must have an understanding of the codes and ordinances relating to safety, health and use of land in the City and knowledge of building construction techniques and principles, however, the position requires no specialized training or degree.

The Code Enforcement Officer reports directly to the Planning Director who, in turn, reports to the City Manager.

The position of code enforcement officer does not function as a department head and has no hiring or firing responsibilities.

The degree of supervision over one of the clerks did not prove to be significant enough to warrant exclusion from the proposed unit.

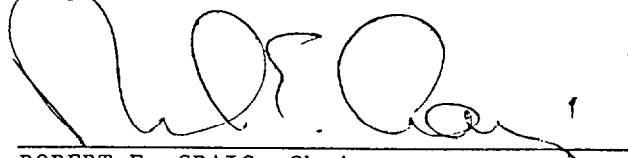
DECISION AND ORDER

After consideration of the testimony, oral and written evidence, the Board finds that a community of interest does exist among the employees in the proposed unit and thereby creates a unit composed of:

clerks, secretary (Probation Dept.), secretary/dispatcher, asst. finance director, deputy tax collector, computer operator/bookkeeper, code enforcement officer and library aide.

Excluded from the unit as confidential employees are: Highway Dept. Clerk, Wastewater Dept. Clerk and the City Manager's Secretary.

An election to determine if the employees in the newly created unit wish to be represented by Council 93, AFSCME, for the purpose of collective negotiations will be held by PELRB as expeditiously as possible.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 30th of April 1987.

Chairman Robert E. Craig presiding. Chairman Craig and member Daniel Toomey voting in favor of the unit; member Richard W. Roulx dissenting. Also present, Executive Director, Evelyn C. LeBrun.

DISSENT

I agree with the majority opinion that the position of Code Enforcement Officer should not be eliminated from the proposed unit because of its supervisory authority (RSA 273-A:8, II). Evidence presented does not indicate a sufficient degree of supervisory authority.

My dissent from the majority is based on what I feel is a great amount of professional expertise needed for the position of Code Enforcement Officer. My opinion is that the officer should be allowed to vote separately indicating his choice as to whether or not he wishes to join the proposed unit.

Testimony by Manager Munck indicated that while the officer did report to the Planning and Economic Development Director, the requirements for the position and knowledge was part of the job description for Code Officer and not of the Planning Director.

Union Exhibit No. 1 - Job Description of the Code Enforcement Officer/ Assistant Plann, I believe is the strongest evidence that the code officer must have a level of professional expertise that is gained through extensive practical experience and/or academic training. Without either of the foregoing, I cannot comprehend how any person appointed to this position could intelligently look at construction documents and blueprints and say whether they met the basic BOCA building code, or other code adopted by the City.

A quick review of the illustrative examples of work in the job description will support added emphasis on the degree of professionalism the officer must have. I disagree completely with my colleagues that this position is one that does not meet the test of professionalism as outlined in RSA 273-A:8, II. I welcome their input that would indicate this position could be filled by a person that had no previous construction or academic training. I would not want a person in a similar job in my community making decisions on life and safety codes for new or renovated buildings in which citizens of that community were to occupy.

For all of the foregoing, I dissent from the majority decision.



RICHARD W. ROULX, Management Representative
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 1st day of May 1987.