



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF N.H.,
LOCAL 1984 OF SEIU, AFL-CIO

Petitioner

and

CITY OF FRANKLIN

Respondent

CASE NO. S-0380

DECISION NO. 87-51

APPEARANCES

Representing State Employees' Association of N.H. Local 1984 of SEIU, AFL-CIO:

Michael C. Reynolds, Esq., Counsel

Representing the City of Franklin:

Paul T. Fitzgerald, Esq., Counsel

Also appearing:

Kathy J. Duval, Director or Organizing, SEA
Ward P. Freeman, Field Representative, SEA
Frank P. Edmunds, City Manager, City of Franklin
David E. Gloddy, Foreman, Water Dept.
Glenn Laramie, Chief Mechanic
Arthur Marceau, Supv. Land & Bldgs.
Albert Morang, Jr., Equipment Operator
Charles Thurber, Foreman, Hwy. Div.
Thomas Woodley, Dir. of Municipal Services

BACKGROUND

On March 5, 1987 the State Employees' Association of N.H., Local 1984 SEIU, AFL-CIO ("SEA") filed a petition for the certification of a bargaining unit in the City of Franklin. The petition requested the inclusion into the unit of "All full-time and permanent part-time employees of the Department of Municipal Services except the Director and Assistant Director." (as "supervisory"). The SEA proposed unit would contain some twenty-three (23) positions in the Department. The Department Secretary was also excluded on the grounds of "confidentiality".

The City of Franklin ("City") through its attorney, filed an answer to the petition on March 20, 1987. The City argued that the proposed unit should not be formed because it was not in the public interest, not in the interest of the employees and that "no common community of interest" existed among a sufficient number of employees

A hearing was held on the petition on May 28, 1987 at the Library in Franklin. At the hearing the City filed a request for Findings of Fact and Rulings of Law.

FINDINGS OF FACT:

At the hearing the City made it clear that they objected to the inclusion of four positions specifically: Transfer Station Operator (1), Superintendent of Land and Buildings (1), Foreman (3) and Chief Mechanic (1). The City claimed that these positions were "supervisory" and as such should not, under 273-A, be included in the unit with those employees over whom supervision was exercised.

Foreman position: The Water Division foreman testified that;

- (a) his crew consists of himself, two (2) heavy equipment operators and one (1) light equipment operator and that their job is to repair water mains that are broken, repair and maintain pumps, add chemicals, etc. The work hours are 7:00 a.m. to 3:30 p.m. and the foreman and the crew work the same hours.
- (b) Testified that the Director or Assistant Director assigns the daily work and he readies the crew and goes to work.
- (c) Sometimes operates equipment in the absence of the appropriate equipment operator and might also work as a laborer on jobs as needed. In general, he does whatever the crew is doing.
- (d) Re: Supervisory duty (see Assn. #1, Job Description) - that this included use of proper equipment, supervision of actual work project, making sure of safety guidelines, procuring necessary materials, notifying utilities under "dig-safe" program, etc.

In general, the supervisory activities were heaviest in the first hour of the day and were "on and off" for the remainder of the day. Foreman also testified that he attended foreman's meetings with Director, Asst. Director and Head Mechanic where work plans, accidents, or any problems could be brought up. He is also a part of the "accident review group" to review any accident which occur and he also submits an equipment "wish list" to the Director.

- (e) Re: Authority of Foreman - testified that he occasionally fills in for the Department Head but not for any length of time; he testified that he does not hire anyone but might participate in the process in an informal way; he does not decide on the size of his crew; does not discharge anyone but can express positive or negative opinions to the Director; can recommend discipline to the Director (although not always followed), that usually he simply talks to the person; has no access to personnel files; evaluation made for purposes of merit pay raise, makes recommendation to Director, he decides; Director decides about

overtime for crew, foreman asks permission to continue work if job not finished. Foreman may order some purchases (\$50.00) limited, on his authority.

- (f) Re: "Community of Interest" - he works same hours as crew, takes his lunch with crew, socializes with crew to some extent, wears same uniform as crew (not as Director) has no city vehicle assigned to him (as did Director) and generally felt "same as crew", as part of the crew.

The Highway Division foreman testified that his situation was (see Assn. #2 for Dept. Organization) essentially the same as the Water Division foreman.

Superintendent of Lands and Buildings position: the Superintendent testified that;

- (a) His division provides janitorial services, minor repair services, cuts grass, takes care of beach, etc.
- (b) Re: Supervisory nature of position: - Basically 6:45 a.m. - 7:00 a.m. starts by assigning work detail, certain directions, takes hour, hour and half, then goes to work as do the others ("3 custodian-laborers") cleans buildings, cleans beach, picks-up trash, cuts lawns, etc. (see Assn. #3). The superintendent does not hire or fire employees, (although may recommend people), nor does he interview prospective employees although his opinion is solicited once persons are hired, and evaluation forms are (sporadically) filled out, perhaps annually. Superintendent doesn't usually attend foreman's meetings nor does he develop a budget for his division. Superintendent is salaried and his residence is some part of his compensation. City Manager maintains his compensation is higher than other foreman.

Chief Mechanic position: the Chief Mechanic testified that;

- (a) He supervises two others (if positions are filled) who work to keep vehicles in proper working order, maintains them and repairs them as necessary and generally takes care of all city department vehicles and other equipment (60 pieces) (see Assn. #5).
- (b) Maintains records including a file for each piece of equipment.
- (c) Spends about one hour each morning assigning the work to be done by himself and the other mechanic(s). He sometimes works as part of a team but quite often the mechanics work on their own.
- (d) Prepares a work schedule for a three-month period and sends this to the Director who may change it and subsequently approve it. The Director decides if a vehicle with high mileage or a badly damaged vehicle should be repaired.
- (e) Has participated in interviewing persons for employment and his views have been solicited.
- (f) Does not usually discipline an employee but, if cannot work at a problem, he can go to the Director with a recommendation for resolution.

- (g) Always clears overtime with the Director unless working on an emergency vehicle.
- (h) Is paid overtime after 40 hours per week.
- (i) Does fill out an evaluation form for those whom he supervises and sends the forms to the Director.

In the City's Personnel Rules and Regulations (Assn. #6), the chief mechanic is included in category of "non-exempt" employee", those who will be paid overtime.

Transfer Station Operator position:

The Director of Municipal Services testified that this position is the supervisor of the solid waste transfer facility, (see Assn. #2).

The transfer station sorts household trash into a large "hopper" and ultimately into a truck trailer to be carted off.

The transfer station operator:

- (a) Receives overtime pay.
- (b) Sets up a work schedule for "station attendant" and "refuse packer(s)".
- (c) Participates with Director in the evaluation of station employees but does not decide himself on hiring or firing employees.
- (d) Is responsible for the operation of the station according to state government mandates in the transfer station operating manual.
- (e) Has constant contact with general public.

The City Manager testified that all four positions discussed above:

- (a) Are responsible for the areas they work in;
- (b) Have similar, limited, purchasing authority;
- (c) Discuss hiring and firing decisions with the Director;
- (d) Discuss discipline questions with the Director;
- (e) Are "working supervisors" with comparable levels of authority.

RULINGS OF LAW

The detailed testimony and exhibits clearly show that the four positions - Foreman, Superintendent of Land and Buildings, Transfer Station Operator and Chief Mechanic are "working supervisors" and as such are at the very end of the managerial "chain of command".

RSA 273-A:8, II, requires that we exclude supervisory employees from the same bargaining unit of other employees if they are "Persons exercising supervisory authority involving the significant exercise of discretion...". In this case we believe this level of discretion has not been reached by these "working supervisors". None of the four supervisors can make hiring or firing decisions, take disciplinary action on their own or participate in the budget process with any regularity or decisiveness. The four positions are very limited in the discretion they exercise with respect to ordering overtime pay or determining policies for their divisions regarding work projects, damaged vehicles, etc. These positions are very comparable, are "working supervisors" or "working foreman" sharing the same working conditions as the other employees, within the same City Department under the same management team and clearly share a "community of interest" with their fellow employees.

Re: City's request for Findings of Fact and Rulings of Law:

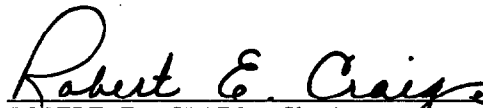
#1, 2, 3, 4, 8, 13, 14, 16 are granted subject to this decisions's wording.

#5, 6, 7, 9, 10, 11, 12, 15, 17, 18 are denied.

DECISION AND ORDER

- (a) The four positions in dispute - Transfer Station Operator (1), Supervisor of Land and Buildings (1), Foreman (3), and Chief Mechanic (1) are not required by RSA 273-A:8, II to be excluded from the proposed bargaining unit and do share a community of interest with the employee with whom they work so closely.
- (b) We hereby order the creation of a bargaining unit in the City of Franklin composed of all full-time and permanent part-time employees of the Department of Municipal Services except the Director, Assistant Director and Department Secretary.
- (c) An election to determine if the employees wish to be represented by the State Employees' Association of N.H., Local 1984, SEIU, AFL-CIO to be held as expeditiously as possible.

Signed this 24th day of July, 1987.


 ROBERT E. CRAIG, Chairman
 PUBLIC EMPLOYEE LABOR RELATIONS BOARD

By unanimous vote. Chairman Robert E. Craig presiding, Members Seymour Osman, Richard W. Roulx & Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.