



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW
HAMPSHIRE, LOCAL 1984, SEIU,
AFL-CIO

Petitioner

v.

STATE OF NEW HAMPSHIRE, DEPARTMENT
OF ADMINISTRATIVE SERVICES

Respondent

CASE NO. S-0350:1

DECISION NO. 88-08

APPEARANCES

Representing State Employees' Association

Chris Henchey, SEA Representative

Representing State of New Hampshire, Dept. of Personnel

David Peck, Esq., Assistant Attorney General's Office
Virginia Vogel, Director of Personnel
Thomas Manning, Manager of Employee Relations

BACKGROUND

This case involving a petition to modify the existing bargaining unit of the Department of Administrative Services to include the employees of the Division of Personnel was filed by the State Employees' Association. Legislation enacted in 1986 placed the now called "Division of Personnel" in the Department of Administrative Services. The inclusion of the Division of Personnel employees within the Department of Administrative Services Unit has generally been mutually agreed to with the exception of four positions which the Director of Personnel seeks to exclude from the unit.

Exceptions were filed on the exclusion of the following positions:

- | | | |
|-------------------------------|---|-----------|
| 1. Personnel Analyst (CC & E) | - | No. 10271 |
| 2. Personnel Analyst II | - | No. 10279 |
| 3. Personnel Analyst II | - | No. 18012 |
| 4. Supervisor of Examination | - | No. 10266 |

These specific positions are part of the classifications of employees titled "Personnel Analyst" but the incumbents of these positions perform special confidential functions over and above overall classification.

Chris Henchey, on behalf of SEA testified that in considering the Division of Personnel's inclusion in the existing bargaining unit of the

Administrative Services Department, several exclusions from the unit had been agreed to and objected to the additional exclusions requested. He cited certain exclusion under RSA 273-A:3, III, "Matters regarding the policies and practices of any merit system established by statute, charter or ordinance relating to recruitment, examination, appointment. . .", Appeal of the State Employees Association of NH, Inc. v. PELRB NH 118, 885, 397 A.2d 1035 12/29/78, Keene State College PAT's v. UNH, Case No. U-0602, and stated that the position involved did not meet the test of confidentiality prescribed in 273-A.

Tom Manning, Manager of Employee Relations testified that 28 individuals in the division of Personnel were considered for the unit and four were agreed to as confidential...however, that three of the additional individuals are performing confidential work with respect to labor negotiations and the fourth, Supervision of Examinations, should also be excluded from the bargaining unit as confidential.

The individuals holding the contested positions individually testified as to their duties and responsibilities. Such testimony indicated that while the general title of Personnel Analyst was used, it did not adequately reflect responsibilities assigned and duties performed by these individuals. Among the duties performed by these individuals are contract language interpretation, development of Rules and Regulations for the Division and participation in development of labor negotiation strategy.

Virginia Vogel, Director of Personnel reaffirmed Manager Manning's testimony and indicated that preparation and participation in the negotiating process is an essential and confidential requirement of the four positions. David Peck through questioning of the witnesses emphasized the possibility of a division of loyalty and stated that the Manager of Employee Relations should in fact be entitled to a certain group of confidential employees.

Representative for SEA objected to the introduction of any responsibilities involving the projections of future requirements and such consideration by the Board.

A hearing on the modification petition was held in the Board's office on December 17, 1987.

FINDINGS OF FACT

The Board finds, after considering all the testimony and exhibits as follows:

1. There exists substantiative confusion and differences in the allocation of position title and the actual duties performed by the four specific individuals which may be addressed and clarified in the present examination of the state personnel system.
2. The Director of Personnel and the Manager of Employee Relations should be entitled to a reasonable number of confidential employees under their supervision, to properly administer negotiated contracts, benefit programs and to conduct negotiations of a sensitive nature without any semblance of Conflict of Interest.

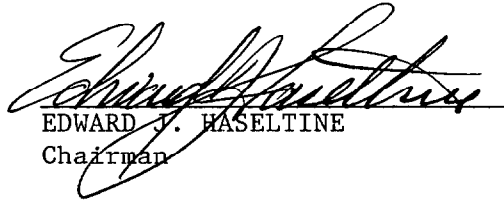
3. The number of confidential positions requested by the Division of Personnel is consistent with similar operations in nearby states.

DECISION AND ORDER

The petition for Modification of the bargaining unit is granted. The four positions excluded from the bargaining unit are as follows:

1. Personnel Analyst (CC & E) - No. 12071
2. Personnel Analyst II - No. 10279
3. Personnel Analyst II - No. 18012
4. Supervisor of Examinations - No. 10266

This order shall be read to mean that the Department shall be entitled to four (4) confidential persons. The persons named in this decision and their replacements shall be covered if they continue to perform such confidential duties. The parties should give consideration to creation of a job classification for such persons to avoid future confusion.


EDWARD J. HASELTINE
Chairman

Signed this 3rd day of March, 1988.

Chairman Edward J. Haseltine and Member Seymour Osman voting in favor, Member James C. Anderson agreeing in part and dissenting in part.

DISSENT

Based on the evidence presented, I find no reason to exclude the Supervisor of Examinations, however agree that the Personnel Analyst (CC & E) No. 12071 and the Personnel Analyst II, No. 10279 and 18012 should be excluded.


JAMES C. ANDERSON
Member



State of New Hampshire

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The Board finds, after considering all the testimony and exhibits as follows:

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EDWARD J. HASELTINE
Chairman

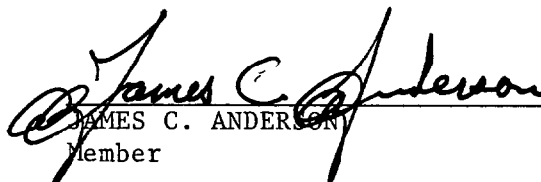
Signed this 13rd day of March, 1988.

Chairman Edward J. Haseltine and Member Seymour Osman voting in favor, Member James C. Anderson agreeing in part and dissenting in part.

The following is the dissenting opinion of:

DISSENT

Based on the evidence presented, I find no reason to exclude the Supervisor of Examinations, however agree that the Personnel Analyst (CC & E), No. 12071 and the Personnel Analyst II, No. 10279 and 18012 should be excluded.


JAMES C. ANDERSON
Member