



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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BERLIN CITY HALL EMPLOYEES ASSN. :  
OFFICE & PROFESSIONAL EMPLOYEES :  
INTERNATIONAL UNION :

Petitioner :

and :

CITY OF BERLIN :

Respondent :

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CASE NO. M-0681

DECISION NO. 93-125

### APPEARANCES

#### Representing Berlin City Hall Employees Assn.:

Chuck McDermott, International Representative

#### Representing City of Berlin:

Robert Tawney, Chief Negotiator  
Mitchell Berkowitz, City Manager

### BACKGROUND

The Berlin City Hall Employees Association, Office & Professional Employees International Union (Union) filed a Petition for Certification on June 10, 1993. It sought the certification of a bargaining unit consisting of the following: Chief Assessor, City Clerk, Development Director, City Engineer, City Comptroller, Fire Chief, Health Officer, Librarian, Chief Operator, Director of Public Works, Recreation Director, Administrator of Welfare, Assistant Planner, Assistant Fire Chief, Engineering Assistant, Chief Chemist, Sewer Foreman, Shop Foreman, Foreman, Building Inspector, Public Health Nurse, Children's Librarian, Assessor Clerk (FT and PT), Clerk/Receptionist/Typist, Account Clerk/Secretary, Secretary, Administrative Clerk, Secretary/Clerk, Desk Assistant, Operator I, Operator II and Maintenance Supervisor. The City of Berlin (City) filed a response to the petition on June 23, 1993. On June 28, 1993, the American Federation of State, County and Municipal Employees, Local 1444 (AFSCME) filed a Modification Petition seeking to place the petitioned-for positions

of Operator I, Operator II, Maintenance and Custodian/Operator (not petitioned-for in these proceedings) in an already existing AFSCME bargaining unit. As the result of a consent thereto by the petitioner in these proceedings filed August 2, 1993 and an agreement between AFSCME and the City on September 9, 1993, the positions of Operator I, Operator II and Maintenance (along with Custodian/Operator) were placed in the AFSCME bargaining unit and are of no further concern in these proceedings.

#### FINDINGS OF FACT

1. The City of Berlin is a "public employer" as defined by RSA 273-A:1 X.
2. During the course of proceedings in this case, the City chose to denominate the first twelve positions listed above as "department heads," the next ten positions (Assistant Planner through Children's Librarian) as "professional, technical or supervisory," and the remaining positions as "support staff." The positions which were added to the AFSCME bargaining unit were not characterized because they were not under consideration herein.
3. During the course of these proceedings, the parties agreed to the establishment of a bargaining unit which merged the petitioned-for positions characterized by the City as "professional, technical or supervisory" and "support staff." That unit consists of the job categories of:

Assistant Planner	Shop Foreman
Engineering Assistant	Sewer Foreman
Chief Chemist	Assessor/Clerk
Asst. Fire Chief	Clerk/Receptionist/Typist
Public Health Nurse	Account Clerk/Secretary
Building Inspector	Secretary
Children's Librarian	Secretary/Clerk
Foreman	Administrative Clerk
	Desk Assistant

This unit involves employees in both full time and part time positions but seasonal part-time employees and intermittent part-time employees are excluded.

4. Personnel whom the City has termed "professional, technical or supervisory" employees may have, or be required to have, additional levels of training, skill or certification than "support staff" employees. Some may have a degree of supervisory authority over other employees in the bargaining unit; however,

neither that degree of authority nor the superior-subordinate relationship rises to a level which would exclude these employees from being in the same bargaining unit under RSA 273-A:8 II because there no evidence of the "significant exercise of discretion" test being met.

5. Personnel denominated by the City as "professional, technical or supervisory" may have more discretion in their respective work schedules than "support staff." Their overall terms and conditions of employment may not be identical; however, given that the employees function and labor on behalf of the same employer, work within the same organizational unit (and, in some instances, in the same building), and share commonality of equipment, work areas and duties, they have met the "community of interest" requirements of RSA 273-A:8 I.
6. The composition of the bargaining unit as agreed by the parties (Finding No. 3, above) is not repugnant to the provisions of RSA 273-A:8.

#### DECISION AND ORDER

Based upon the parties' agreement and the foregoing findings of fact, the bargaining unit described in Finding No. 3 is hereby established. Petitioner's Motion to Withdraw without prejudice so much of the pending petition as pertains to those employees described by the City as "department heads" (namely the first twelve positions listed in "Background," from Chief Assessor to Administrator of Welfare, inclusive) is granted.

So ordered.

Signed this 17th day of September, 1993.



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PARKER DENACO  
Hearing Officer