



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

v.

TOWN OF MILTON

Respondent

CASE NO. M-0726

DECISION NO. 96-055

APPEARANCES

Representing Teamsters Local 633 of NH:

Thomas D. Noonan, Business Agent

Representing Town of Milton:

Walter Mitchell, Esq.

Also appearing:

Chief Nelson Forest, Town of Milton

Ricky Plummer, Town of Milton

James W. Doyle, Town of Milton

BACKGROUND

On March 1, 1996, Teamsters Local 633 of New Hampshire (Union) filed a petition for the certification of a sixteen member bargaining unit to consist of ten positions. The positions named in the petition are: police officer, patrol (4), police officer, sergeant (1), police department secretary (1), highway department secretary (1), mechanic (1), truck driver (3), selectmen's clerk (1), accounts payable (1), full-time landfill operator (1), part-time landfill operator (2). On March 15, 1996, the Town of Milton (Town) filed its response excepting to

the inclusion of certain positions and a lack of community of interest among various positions. The positions challenged were the selectmen's clerk, the highway department secretary and the police department secretary on the basis of confidentiality. The police sergeant and landfill operator were requested excluded because they supervise other bargaining unit positions. Also, the Town disputed the number of patrol police officers employed. A hearing was held before the undersigned hearing officer on May 13, 1996, at which time the parties agreed to the exclusion of the position of selectmen's clerk and agreed that four patrol officer positions are at issue. The record remained open until May 17, 1996, when requested job descriptions were received from the Town and taken into evidence.

FINDINGS OF FACT

1. The Town of Milton employs personnel in various departments of town government and thereby, is a "public employer" within the meaning of RSA 273-A X.
2. Town Administrator Ricky Plummer has been employed with the Town of Milton for three weeks. He has familiarized himself with Town government. He testified that the secretary at the public works department keeps all confidential personnel records for public works department employees and types confidential correspondence between the public works director and himself. He testified that he will correspond with the Union representative and that his secretarial work is done by the selectmen's clerk, a position which has been excluded by agreement.
3. James Doyle, the landfill operator, said that the secretary at public works sometimes does typing for him as there is a working relationship between the facilities. Testimony revealed a cooperative relationship between employees at the landfill and public works department. There is a single sheet of job descriptions for the public works department and the landfill operation. This document was taken into evidence post-hearing on May 17.
4. James Doyle, who is the state certified full-time landfill operator, reports to Mr. Smith, director of public works department. Doyle may make recommendations regarding those who work at landfill but he does not discipline them. The director of public

works handles discipline and scheduling. Mr. Doyle oversees landfill operations and the safety of workers, all three of whom are part-time workers. The landfill is located near the public works department and he and other landfill employees may work with the mechanic at the public works building repairing equipment or may perform snowplowing and other duties with public works employees. The full-time landfill operator position operates under the Town of Milton Personnel Policy (Joint #1). Both the public works and the police departments are geographically separated by short distances from other Town offices.

5. The secretary in the police department handles reports and correspondence for several different positions in that department. This position has access to personnel files which are kept in Chief Forest's office. These files contain personal information such as records on employees. This secretarial position is termed confidential for those reasons. Chief Forest may provide facts or figures which maybe used in labor negotiations by the town administrator. The chief does not confer with his secretary regarding policy decisions. All Town employees, with the exception of the police department, received a two percent raise this year. Police officers received a higher raise as arranged by the chief and selectmen. Only the police department secretary received the two percent Town employee raise. The raise received this year was not dependent on performance based evaluations.
6. All Milton police department positions, including the chief and the sergeant, do patrol duty. All officers are sworn, have a dress code and have a complex hiring process different from others employed by the town. There are certain restrictions on officers' personal lives. Police officers work different hours from Town employees because there must be twenty-four hour coverage. They have the same number of vacation day and holidays but they are taken according to scheduling demands. Otherwise, police officers are covered under the Town personnel policy which provides a health and a life insurance policy. In addition, officers qualify, under special provisions, for the New Hampshire Retirement Plan.
7. The sergeant, or any other officer, is expected to relieve an unfit officer of duty and to notify the

chief. The sergeant performs scheduling of vacations and day to day hours for other officers. The sergeant's position has no role in hiring. That position has no role in firing as was testified by the sergeant and reiterated by Chief Forest. He may make a verbal correction but he takes no formal discipline. The sergeant does on the job supervision but has a reporting/recommending role in evaluation and discipline rather than an active role. The job description for sergeant reflects the testimony regarding the absence of disciplinary and evaluative authority. This position steps in when the chief is absent and the sergeant is on duty. However, the sergeant is not always scheduled to be on duty when Chief Forest is absent.

DECISION AND ORDER

RSA 273-A:8 places responsibility for determining the composition of bargaining units with the Public Employee Labor Relations Board instructing that the principle of community of interest must be considered in making such determinations. In this case, all positions under consideration work within the same small organizational unit. A self-felt community of interest typified by statements of cooperation, familiarity or friendliness was expressed among those testifying at the hearing. All are covered by the same basic set of personnel rules. Benefits are alike throughout, and all have received the same percentage increase in salary this past year with the exception of the police officers.

Reviewing specific requests for exclusion, the two secretarial positions at issue are to be included in the bargaining unit. Neither position works in proximity to the party who will be engaged in labor relations negotiation for the Town. Both secretaries may handle employees' files and raw data which may later be used in negotiations but neither will be doing correspondence regarding negotiation proposals. Handling of other information which is confidential for reasons other than labor relations is not a basis for exclusion. "Confidentiality" for narrow labor relations purposes will not be inferred in the absence of specific testimony. Prior to the taking of testimony, the selectmen's secretary was excluded by agreement because that position will type correspondence between the town administrator and the union as proposed.

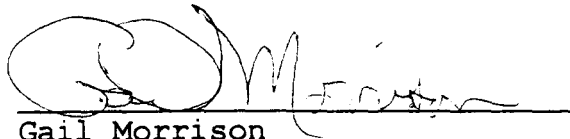
The landfill operator is included in the proposed bargaining unit. He supervises the operation of the landfill but he does not exercise the significant supervisory discretion which would require exclusion of a position from the proposed bargaining unit. He does not schedule, discipline or evaluate.

The sergeant is the traditional working supervisor. Real discretionary authority is left with the chief in matters of hiring, firing, evaluation and discipline. However, on review of the community of interest shared by the police officers and other Town employees, there are too many factors weighing against inclusion of the officers. They share a historic profession: law enforcement. Certification, training and stringent hiring requirements are noted especially as conditions of employment different from other employees. The officers share unique working conditions as illustrated by their shift system, uniforms, holiday time accommodations. There are benefits available to them in addition to those available to other employees and special arrangements have been made for pay increases such as the one dollar increase enjoyed this year. Appeal of Weare, Case No. 92-395, slip op., (N.H., Sept. 15, 1993), reversing PELRB decision No. 92-57 (March 26, 1992). The sergeant and four officers are not properly within this unit. The secretary for the police department is included.

The unit certified is a ten member unit consisting of the positions of secretary in the department of public works (1), secretary in the police department (1), full-time landfill operator (1), part-time landfill operator (2), mechanic (1), truck driver (3), accounts payable clerk (1).

So ordered.

Signed this 9th day of July, 1996.


Gail Morrison
Hearing Officer