



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON PROFESSIONAL,
ADMINISTRATIVE AND SALARIED
EMPLOYEES

Complainant

v.

CITY OF LEBANON

Respondent

CASE NO. M-0730

DECISION NO. 96-065

APPEARANCES

Representing Lebanon Professional, Administrative and
Salaried Employees:

George E. Sykes, III

Representing City of Lebanon:

Robert Leslie, Esq.

Also appearing:

Len Jarvi, City of Lebanon

Barry Brenner, City of Lebanon

Dorothy Nolet, City of Lebanon

William Pandilf, Lebanon Professional, Administration
and Salaried Employees

Rick Jurgens, Valley News

BACKGROUND

On April 16, 1996, the Lebanon Professional, Administrative and Salaried Employees (Union) filed a petition for the certification of a forty (40) member bargaining unit to consist of thirty-four (34) different positions, five of which are

vacant. The positions follow: librarian (1), assistant recreation director (1), children's librarian (1), deputy library director (1), welfare director (1), airport operations supervisor (1), tax collector (1), public utilities bookkeeper (1), code interpreter/health inspector (1), supervising accountant (1), police inspector (1), communications commander (1), police lieutenant (5), superintendent parks/grounds (1), recreation director (1), city clerk (1), assessor (1), water superintendent (1), police captain (2), wastewater superintendent (1), library director (1), data processing manager (1), city engineer (1), city planner (1), fire chief (1), airport manager (1), highway superintendent (1), finance director (1), police chief (1), community development director (1), director of public works (1). The proposed bargaining unit is described to include all salaried, non-union, exempt and non-exempt city employees. On May 2, 1996, the City of Lebanon (City) responded with objections to the inclusion of twelve positions because of the confidential (1) and/or supervisory (12) natures of the positions. A hearing was held before the undersigned hearing officer on June 5, 1996. A motion to amend the response by requesting exclusion of two additional positions, city clerk and welfare director, was submitted at the hearing. The Union objected and the motion was held in abeyance. The positions are considered below.

FINDINGS OF FACT

1. The City of Lebanon employs personnel to operate the many departments of municipal government and thereby is a "public employer" with the meaning of RSA 273-A:1 X.
2. The positions to which the City objects are department head level positions or positions next in line to department heads. The twelve challenged positions are: code enforcement director, community development director, police captain, police chief, recreation director, library director, fire chief, airport manager, city clerk, welfare director, director of public works and finance director. Of these, the airport manager position is vacant.
3. The City operates under a city manager form of government with authority for administration of all City departments vested in one executive. City Manager Barry Brenner has held that position for one and one half years. According to the City Personnel Policy, last amended in 1989, the city manager has the power to hire and fire, suspend,

change pay status, dismiss, hear grievances and transfer employees. The city manager may delegate "the responsibility to select, retain, promote and separate employees..." (Union No. 2, Art, 2.1. 2.2), but testimony was that such delegation has not occurred.

4. The City Personnel Policy (Union No. 2, Art. 5.7) describes a system of discipline in which department heads, as well as the city manager, may initiate the different forms of discipline. Mr. Brenner testified that department heads may give verbal warnings but that the additional steps, written warnings, supervision and dismissal, are within the purview of the city manager. Department heads do not have authority on their own to issue written warnings, suspend or terminate personnel.
5. Semi-annual evaluations and the merit raises are required by the City Personnel Policy (Union No. 2, Art. 5.2 and Art. 3.5.3). Both evaluations and merit raises have been suspended and have not been performed for several years. Rather, a decentralized personnel system is in operation so that some departments evaluate regularly and some do not evaluate according to testimony from City Manager Brenner. He has seen approximately ten evaluations during his tenure. The evaluations he receives most frequently are for probationary employees in the course of becoming regular employees.
6. Department heads are responsible for daily operations of their departments. The current but undated job descriptions for the positions of police chief (City No. 3), fire chief (City No. 6), library director (City No. 5), finance director (City No. 10), and recreation director (City No. 17) are in evidence. None has been revised since Mr. Brenner's being hired. Each indicates a level of supervision exercised greater than that testified to by Mr. Brenner.
7. The recently revised public works director job description (City No. 8) is also in evidence. Among the primary responsibilities are "personnel administration and labor relations" further defined as administering provisions of the collective bargaining agreement and personnel policies. The job descrip-

tion of the new community development director (City No. 12) is in evidence. It contains little or no indication that significant supervision is exercised and so is consistent with testimony from Mr. Brenner that he is responsible for hiring, firing and disciplining City employees.

8. The specific duties of the position of police captain were not addressed in testimony. The position is that of a division head who makes recommendations to the Chief. The job description in evidence pre-dates Mr. Brenner's being hired. (City No. 4) It varies with testimony by Mr. Brenner as to the supervisory authority this position might exercise in the areas of discipline and evaluation.
9. The job descriptions for the remaining challenged positions, welfare director (City No. 23), airport manager (City No. 21), city clerk (City No. 22) and code enforcement officer (City No. 13) are in evidence. Each lacks terminology associated with the exercise of significant supervisory discretion, the standard of RSA 273-A:8.
10. The finance director and city treasurer is Leonard Jarvi. He attends staff meetings with the city manager who asks his advice on strategy regarding financial matters. He costs out proposals and determines the financial impact of suggested changes in benefits available under the personnel plan.

DECISION AND ORDER

RSA 273-A:8 places authority for the determination of bargaining units of public employees with the Public Employee Labor Relations Board. In exercising its authority, the Board observes certain statutory proscriptions. RSA 273-A:8 II proscribes bargaining units which mingle supervisors and rank and file employees. Also, an employee who shares labor relations confidences with those negotiating toward collective bargaining agreements must be excluded from bargaining unit membership under RSA 273-A:1 1X (c).

The finance director is excluded from bargaining unit membership for confidentiality reasons. The positions of fire chief, police chief, library director, public works director and recreation director retain the authority, by virtue of their job descriptions, to exercise significant supervisory discretion over

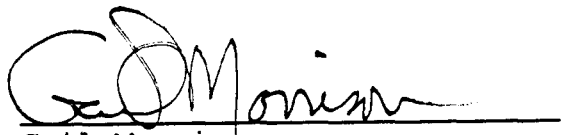
their employees. These positions are excluded from the bargaining unit.

The remaining challenged positions are included in the proposed unit. Despite the City's wish to exclude the positions of police captain, city clerk, welfare director, code enforcement officer, airport manager and community development director, judging by the job descriptions supplemented with testimony, the indicia of significant supervisory discretion are not associated with these positions. Appeal of East Derry Fire Precinct, 137 N.H. 607, 610 (1993), Appeal of University System of New Hampshire, 131 N.H. 368, 376 (1988). They likely assign work but there has been no delegation of the duties of selection, retention, promotion or separation. (See Finding No. 3.) These positions have little or no role in formal discipline nor in evaluation and recommendation for pay increases for subordinate employees.

The middle management bargaining unit appropriate for the City of Lebanon consists of thirty-four (34) members in the following twenty-eight (28) positions, five of which are vacant. The positions are: librarian (1), assistant recreation director (1), children's librarian (1), deputy library director (1), welfare director (1), airport operations supervisor (1), tax collector (1), public utilities bookkeeper (1), code interpreter/health inspector (1), supervision accountant (1), police inspector (1), communications commander (1), police lieutenant (5), superintendent parks/grounds (1), landfill superintendent (1), deputy fire chief (2), code enforcement director (1), city clerk (1), assessor (1), water superintendent (1), police captain (2), wastewater superintendent (1), data processing manager (1), city engineer (1), city planner (1), airport manager (1), highway superintendent (1), community development director (1).

So ordered.

Signed this 5th day of AUGUST, 1996.


Gail Morrison
Hearing Officer