

21, 1997, which in part indicates that the parties agree that, except for certain library positions, the bargaining unit has not included part-time employees as a general rule.

FINDINGS OF FACT

1. The City of Portsmouth (City) maintains a staff of employees in the operation of municipal government and so is a public employer within the meaning of RSA 273-A:1 X.
2. A.F.S.C.M.E. Local 1386 (Union) is the duly certified exclusive bargaining representative for a bargaining unit of full-time City employees. The City and the Union are parties to a collective bargaining agreement (CBA) effective July 1, 1994, through June 30, 1997, signed August 15, 1996 (Joint Exhibit #1). The unit description is contained in Article 3, which is the recognition clause of this most recent collective bargaining agreement.
3. Portsmouth City government has been reorganized since the approval of the CBA. The position of Human Resources Director was created and was approved by the City Council on March 17, 1997. The position was filled on July 14, 1997, when Dianne Fogarty was hired. The predecessor position, the three-part position of Purchasing, Risk Management and Human Resources Director, was eliminated.
4. Ms. Fogarty testified that the City Manager directed her to hire Elaine Boucas to be her secretary. Boucas's desk has been moved up to the fourth floor with the executive offices and a new job description has been developed (City Exhibit No. 2) which reflects the move. Ms. Boucas had been the secretary to the former Purchasing, Risk Management and Human Resources Director. The former position was a bargaining unit position.
5. Ms. Fogarty works exclusively in human resources. She represents the City on the negotiation teams of three bargaining units, helps author proposals on health insurance and other benefits, performs surveys and creates other tools to assist in ascertaining the

effect of proposals, develops policy, meets with the City Manager each Monday in planning sessions, answers grievances, and performs other tasks related to administering CBAs.

6. Fogarty's secretary is required to type minutes of the weekly meetings with the City Manager at which confidential labor relations and personnel matters are discussed. She types all correspondence, opens all mail and does all filing for the new Human Resources Manager. Ms. Fogarty utilizes the position as a sounding board regarding negotiations and, during negotiations, Ms. Fogarty and her secretary operate as a team. Ms. Fogarty testified that, if this secretarial position were in the bargaining unit, it would hurt the Human Resources Manager position and would require adjustments such as keeping separate files, having Fogarty do her own confidential typing and excluding her secretary from meetings with the City Manager.

ORDER AND DECISION

RSA 273-A:8 empowers the Public Employee Labor Relations Board to determine the composition of bargaining units for public employees. The Board is to give consideration to the principle of community of interest and to exclude those positions with different interests. RSA 273-A: 1 1X (c) excludes from the definition of "public employee" an employee who stands in a confidential relation to the public employer.

Ms. Fogarty's position was designed to perform critical labor relations functions for the public employer. Testimony and documentary evidence are convincing that the particular position of secretary in question participates in and provides support for the Human Resources Manager as she carries out critical labor relations functions and so stands in confidential relation to the public employer. *Appeal of City of Laconia*, 135 NH 421, 423-25 (1992). The Secretary to the Human Resources Manager must be excluded from the bargaining unit.

The following position classifications come under the provisions of Union membership:

Account Clerk

Accountant, Assistant

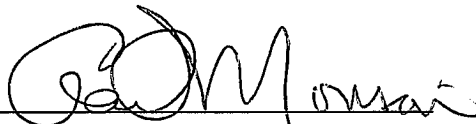
Accountant, Junior
 Administration Assistant
 Assistant Foreman
 Chemist
 Clerk Typist
 Custodian Lead Man
 Deputy Tax Collector
 Draftsman
 Equipment Mechanic
 Laborer
 Legal Secretary
 Librarian Assistant I, II, III
 Meter Reader
 Parking Garage Attendant
 Plant Operator I, II
 Pool/Spa Technician
 Secretary
 Truck Driver I, II
 Violations Clerk
 Water/Sewer Billing Manager

Accounting Assistant
 Administrative Clerk
 Cashier/Attendant
 Collection Clerk
 Custodian
 Deputy City Clerk
 Dispatcher
 Engineering Technician
 Equipment Operator I, II
 Lab Technician
 Librarian I, II
 Lifeguard
 Meter Repairman
 Planning Aide
 Plant Operator Trainee
 Sanitary Laborer
 Switchboard Operator Trainee
 Utility Mechanic
 Watchman

The City's petition for modification of the bargaining unit for City employees, A.F.S.C.M.E. Local #1386, is hereby granted.

So ordered

Signed this 12th day of January, 1998.



GAIL C. MORRISON
 Hearings Officer