



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| TEAMSTERS LOCAL 633 OF NH | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | CASE NO. M-0693:4 |
| | : | |
| CITY OF BERLIN | : | DECISION NO. 1998-006 |
| | : | |
| Respondent | : | |

APPEARANCES

Representing Teamsters Local 633 of NH:

Richard Vachon, Business Agent

Representing City of Berlin:

Mitchell Berkowitz, City Manager

Also appearing:

Paul E. Fortier, Teamsters Local 633
James A. Wheeler, Teamsters Local 633

BACKGROUND

Teamsters Local 633 filed a petition for modification of the bargaining unit for municipal department heads on October 24, 1997. The City filed its answer on October 30, 1997. The City objects to the proposed inclusion of the City Planner position in the Teamsters bargaining unit alleging that it is not a department head level position and so lacks a community of interest with bargaining unit members and that the position is supervised by a bargaining unit position. A hearing was held before the undersigned hearings officer

on December 19, 1997, at the conclusion of which the record was closed.

FINDINGS OF FACT

1. The City of Berlin is engaged in restructuring its municipal government. (Teamsters Exhibit No. 3.) In July of 1997, the position of Development Director was eliminated and the position of City Planner was adopted. The Assistant Planner was moved into the newly created position of City Planner. The City Planner does much of the work formerly done by the Development Director. (City Exhibit No. 1, Joint Exhibit No. 1).
2. The Development Director position has been included in the Teamsters bargaining unit since its certification in early 1994. PELRB Decision No. 94-02 (January 24, 1994). The now vacant Assistant Planner position is included in the Office and Professional Employees International Union. The City has excluded the City Planner position from both bargaining units. (Teamsters Exhibits No. 1 & No. 2).
3. The parties have stipulated that the Teamsters bargaining unit positions as they exist today are: Recreation Director, Health Officer, City Assessor, City Clerk, Welfare Administrator, City Engineer, Fire Chief, Public Works Director, Chief Operator and Superintendent, Head Librarian. The position of Development Director is in question because many of the duties of the position have been transferred to other positions.
4. A memorandum to the City Comptroller from Mitchell Berkowitz states that the new City Planner, a position filled by the former Assistant City Planner, is to receive union negotiated benefits, which are, "... the better of the benefits as offered with either the Teamsters or OPEIU contracts." (Teamsters Exhibit No. 1.) Subsequently, on October 17, 1997, Charles B. McDermott, Business Agent for OPEIU, Local 6 wrote to Mr. Berkowitz alleging that the City Manager had reneged on their understanding that the new City Planner position would be included in the OPEIU bargaining unit. He noted that the Teamsters disagreed with OPEIU's opinion and had filed its protest with the NH PELRB. (Teamsters Exhibit No. 2).

5. Job descriptions for the now unfilled position of Development Director and the new position of City Planner are in evidence. (Joint Exhibit No. 1 and City Exhibit No. 2). There is an overall similarity between the position descriptions, except the City Planner position is intended to have less responsibility for zoning matters than did the Development Director. (Teamsters Exhibit No. 3). Also, the City Planner position writes grants and administers federal funds, both of which were not specified duties of the Development Director. According to the job description for the City Planner (City Exhibit No. 1), the City Planner position reports to the City Manager and an unnamed department head. The Development Director did not report to a department head but was the acknowledged department head. The City Planner job description lists as "Examples of Work" complex tasks which require the assistance of a staff. The position "[s]upervises as required, personnel to accomplish the above;" though it is not designated as a department head. (City Exhibit No. 1).
6. The City Engineer, James Wheeler, understands that he is to provide oversight to the Development and Planning Department as he does the Pollution Control Department and the Public Works Department. He confers with the head of Pollution Control regarding budget preparation as he will the City Planner. He indicated that the City Planner works "with" him and does not work "for" or "under" his position but reports to the City Manager as is described in the job description for City Planner. (City Exhibit No. 1). The relationship between the City Engineer and the City Planner is collegial. They confer perhaps two times per week and speak occasionally over the phone regarding site plans that may come before the planning committee. Their offices are in different buildings. The City Engineer has his own staff which he evaluates. He does not evaluate the City Planner or her staff. Neither does he have authority to discipline the City Planner nor her staff. Any disciplinary question which might arise would be referred to the City Manager. Functionally, the Development Director was the City's planner and the present City Planner acts as does a department head.
7. Both parties acknowledge that additional changes are to be made relating to the municipal government restructuring. Impact bargaining has been delayed while

a grievance is processed and while the bargaining unit status of the City Planner remains outstanding.

DECISION AND ORDER

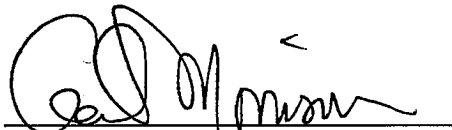
RSA 273-A:8 places questions regarding the composition of public employee bargaining units, including disputes regarding modifications of such units, within the jurisdiction of the Public Employee Labor Relations Board. Regulation Pub 302.05 sets down considerations governing modification requests.

The Teamsters modification request follows a partial restructuring of municipal departments by the City of Berlin as anticipated in a memorandum of June 16, 1997, from City Manager Berkowitz to the Mayor and City Council. (Teamsters Exhibit No. 3). The Planning and Development Department is now in similar relation to the City Engineer as are the Public Works and Pollution Control Departments, the heads of which are included in the Teamsters bargaining unit.

The City Engineer does not exercise significant supervisory authority over the City Planner. *Appeal of East Derry Fire Precinct* (1993) 137 N.H. 607. The City Manager retains that significant discretionary authority. The City Planner functions as a department head within Berlin City government and shares a community of interest with others in the Teamsters bargaining unit. This City Planner position is properly within the department head level bargaining unit. The position of Development Director is deleted from the bargaining unit. The modification petition is hereby granted.

So ordered.

Signed this 30th day of January, 1998.



Gail C. Morrison
Hearing Officer