

hearing was commenced before the undersigned hearing officer on October 13, 1998. At the hearing, the certification petition was amended by agreement. The record of evidence was closed at the conclusion of the hearing on October 13, 1998.

FINDINGS OF FACT

1. The Town of Pittsfield (Town) employs police officers and other personnel to operate its police department and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Teamsters Local 633 (Union) has petitioned for certification of a twelve position bargaining unit to consist of the following job titles: corporal (1), full-time police officers (5), part-time police officers (5), dispatcher/clerical (1). The position of chief was excluded on the original petition and lieutenant position was agreed deleted at the hearing.
3. Only one of the five part-time officers' positions is filled. Jonathan Fisher holds that position. Employees who were part-time officers recently have filled formerly vacant full-time positions. Thereby, the ranks of part-time officers have been depleted. The remaining four part-time positions on the books are unfilled. Two of the full-time officers are probationary and will remain so until June of 1999.
4. Part-time officers are trained and certified by the State. Officer Darrin Brown was hired on a part-time basis and then became a full-time officer. Other officers hired on a part-time basis have become full-time officers. Officer Jeffrey Cain is such an officer who became a full-time officer in June.
5. Corporal St. Laurent is the senior police officer. He does patrol duty, as do the other officers and the chief. The position of lieutenant is vacant. There is no position of sergeant authorized in the chain of command of the Pittsfield Police Department. In addition to his own duties, the corporal performs tasks ordinarily carried out by the lieutenant when the latter is absent. (Town Exhibit No. 1). The

corporal has authority to relieve officers from duty. He may recommend disciplinary action that may be carried out by Chief Wharem and Board of Selectmen. The corporal is "expected to act with a great measure of independence while keeping his superiors informed." According to the job description, the corporal reviews the work performance of part-time officers. This year, Corporal St. Laurent has been called upon to evaluate his peers and to assign their hours. Neither duty appears in the undated job description for corporal that was adopted after Chief Charron's departure.

6. Town Administrator Frederick W. Welch testified that Chief Charron recommended that the lieutenant position not be filled, that St. Laurent be named corporal and that he be given enhanced duties. Welch recalls that the corporal's job description was adopted during the eighteen month interval following the retirement of Chief Charron under the brief tenure of Chief McKeel.
7. The Administrative Assistant/Dispatcher is a full-time position reporting to and supervised by the chief. An undated job description was provided. (Town Exhibit No. 2). Besides dispatching, this position types citations and various documents for the other officers and does clerical work for the chief. The job description and testimony of Chief Wharem indicates that this position maintains the security of sensitive files and schedules meetings for the chief. Chief Wharem testified that, should a bargaining unit be certified, he will be the Town's negotiator. In that case, the administrative assistant/dispatcher would be expected to type correspondence between the chief and the town administrator relating to negotiations.
8. Robert Wharem has been the Chief of Police since August 28, 1998. In the Town of Pittsfield, the Board of Selectmen have authority on many matters including the decision to hire and fire town employees. There is clerical staff in place that produces correspondence resulting from decisions on personnel matters.

DECISION AND ORDER

RSA 273-A:8 authorizes the Public Employee Labor Relations Board to determine, upon petition, whether a bargaining unit is to be certified and, if so, the composition of that bargaining unit considering a number of factors.

In the case of the Pittsfield Police Department petition, the Town argues that there are an insufficient number of positions to form a bargaining unit considering its challenges to the inclusion of several different positions.

The Town points out and it is true that a number of requested bargaining unit positions, part-time and full-time, remain unfilled. Also, some proposed bargaining unit positions are held by probationary employees. Neither situation is an impediment to including a position in a bargaining unit. It is the position, not the individual holding that position, that must be examined. However, once a bargaining unit is determined, the probationary status of the holder of a position is a barrier to voting. RSA 273-A:I (d). Also, the statute requires a minimum of ten positions to certify a bargaining unit, RSA 273-A:8 I (d). However, there is not a statutory minimum number of eligible voters who must vote in an election to approve or disapprove the ten member or greater bargaining unit. In this case, there is no challenge stated to any of the actual ten part-time and full-time patrol positions that compose the full complement of officers of the Department.

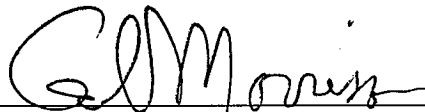
The Town has challenged the inclusion of the position of corporal based on the supervisory nature of the position. RSA 273-A:8 II. The authority to hire and fire in this small town rests with the Selectmen. The chain of command now in effect includes the chief and the unfilled position of lieutenant followed by the corporal. When he is acting as lieutenant, Corporal St. Laurent may exercise considerably more authority than when he is performing tasks that are within the corporal's job description. Though the position of lieutenant is unfunded this year, the position is an excluded supervisory position that remains to be filled at the pleasure of the Board of Selectmen. Standing alone, the duties of the position of corporal are not characterized by supervisory authority involving the significant exercise of discretion. (Finding of Fact No. 5). Appeal of East Derry Fire Precinct, 137 NH 607, 622 (1993).

The administrative assistant/dispatcher produces correspondence for Chief Wrenn. Thus, the Town believes the position should be excluded because of its confidential nature. Appeal of Laconia, 135 NH 421, 423 and 424 (1992). However, this position does general clerical work for officers as well as dealing with the general public as dispatcher. Letters relating to personnel actions are not produced by the administrative assistant/dispatcher but are produced by the Board of Selectmen's clerical staff. This position does not perform a consultative function for the policy maker. Presently, there is no evidence that the negotiator's effectiveness would be hindered by the inclusion of this position in the bargaining unit as was the case in Laconia. It is premature to exclude this position when correspondence on labor negotiations may be handled by other clerical staff and the position is not confidential in a manner requiring exclusion on the facts presented.

A bargaining unit may be certified for the Pittsfield Police Department employees. The ten full-time and part-time officer positions are appropriate for this bargaining unit as are both the corporal's position and the administrative assistant/dispatcher. Should circumstances change for any of the positions, there is a proven remedy. Plainfield Support Staff/NEA-New Hampshire v. Plainfield School District, Decision Nos. 1995-048 (1995) and 1997-128 (1997).

So ordered.

Signed this 3rd day of December, 1998



Gail C. Morrison
Hearing Officer