



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 2301/SEABROOK
SUPERVISORY EMPLOYEES

Complainant

v.

TOWN OF SEABROOK

Respondent

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CASE NO'S: M-0592:4

M-0592:6

DECISION NO. 1998-107

APPEARANCES

Representing AFSCME Local 2301/Seabrook Supervisory Employees:

Jack McMath, N.H. Coordinator, AFSCME

Representing Town of Seabrook:

Robert Ciandella, Esq., Counsel

Also appearing:

E. Russell Bailey, Town Manager

Deirdre Greene, President Local 2301

BACKGROUND

AFSCME Local 2301/Seabrook Supervisory Employees filed a petition to modify its bargaining unit on July 21, 1998, by adding the positions of Animal Control Officer, Deputy Tax Collector, Assessor and Sewer Project Engineer. The Town filed its answer on August 5, 1998. A second modification petition was received on August 7, 1998, requesting the addition of the Police Chief to the supervisory bargaining unit. No objection was received from the Town within the statutory time frame. The petitions were consolidated for hearing. Written response to the

second petition was waived and oral objections based on a lack of community of interest and the supervisory nature of the Chief's position were taken at the hearing held before the undersigned hearing officer on October 23, 1998. The record remained open for the receipt of specified documents and was closed on November 2, 1998, after the receipt of post-hearing closing arguments and several job descriptions from the Town.

FINDINGS OF FACT

1. The Town of Seabrook (Town) employs various personnel, including department heads and supervisors, to carry out the functions of municipal government and so is a "public employer" within the meaning of RSA 273-A:1 X. The Town has adopted the Town Manager form of government in which a Town Manager is hired by the Selectmen and is delegated authority to administer Town government under RSA Chapter 37.
2. AFSCME Local 2301/Seabrook Supervisory Employees (Union) is the duly certified exclusive bargaining representative for supervisory and department head level positions employed by the Town of Seabrook. These bargaining unit positions are: Assistant Recreation Department Director, Civil Defense Director, Deputy Town Clerk, Lieutenant Detective, Water and Sewer Superintendent (formerly Water Department Superintendent), Operations Lieutenant, Recreation Director, Welfare Officer, Deputy Town Treasurer, Mosquito Control Director, Code Enforcement Officer, Deputy Fire Chief, Deputy Police Chief and Chief Operator-Wastewater Treatment Plant.
3. The Town and the Union are parties to a collective bargaining agreement (CBA) with an ending date of March 31, 1998. The addition of the Police Chief to the bargaining unit was addressed during negotiations held from September 1997 to January 1998. Article 1.1 of the CBA limits membership in the bargaining unit to permanent employees. (Joint Exhibit #1).
4. The position of Police Chief is a department head level position with statutory authority addressed in RSA 105:1, as compatible with RSA 37:5, the

statutory section that sets out the authority of the Town Manager. Deirdre Greene, Welfare Administrator and President of Local 2301, testified that she had discussed the matter of unit inclusion with the Police Chief and that the position has the same authority as any other department head whose position is in the bargaining unit.

5. The Police Chief is supervised by the Town Manager who gives weight to the Chief's recommendations but occasionally countermands his decisions. Town Manager, E. Russell Bailey, specifically recalled such reversals when the present Chief authorized certain expenditures of funds for employee training and again when the Chief relaxed the test standards for hiring new officers. He stated that there is no formal evaluation format but that the Police Chief is ultimately responsible for evaluating the quality of the Deputy Police Chief's work. The Chief is responsible for the hiring process including testing and oral boards. Bailey testified that the chain of command in the Seabrook Police Department is more structured than in other departments of Town government so that officers will not act without direction and proper authority. The Chief has authority to mete out ordinary discipline but suspensions must be taken to the Town Manager for action.
6. Both the job description for and testimony about the position of Police Chief established that the Chief is "responsible for planning, directing, coordinating, controlling and staffing all activities for the Department." (Union Exhibit No. 1). The position develops the professional organizational structure and assigns, details and transfers members of the Department. The Chief delegates authority, prepares the Department budget and institutes certain policies and procedures consistent with his duties addressed in the job description for the Chief of Police.
7. The Police Lieutenant is a member of the bargaining unit as is the Deputy Chief. The former position is directly administratively supervised by the Chief

and works closely with the Chief. The latter is generally supervised by the Chief of Police. Their job descriptions were submitted after the hearing.

8. The Animal Control Officer is the sole Town employee who enforces town ordinances regarding dogs and other animals. This specialized law enforcement work is performed from the Seabrook Police Department under the supervision of the Chief of Police and includes budget preparation and purchasing necessary for animal control functions. (Union Exhibit #2). This position sets its hours of work subject to the approval of the Chief.
9. The position of Sewer Project Engineer was created five years ago as a durational position with responsibility to supervise a number of durational employees most of whom are in an SEA bargaining unit. The \$55 million dollar project is in its final stages. When the work is completed in early 1999, the job will no longer exist. There is no job description but the advertisement soliciting applications for Project Manager before a closing date of April 30, 1993, was submitted after the hearing. It explains that this position is "to manage the construction of the wastewater treatment facility and collection system..." and that, "[t]he project should take approximately 3+ years to complete." Later job advertisements for Assistant Sewer Project Engineer include the notice that the position is for the "duration" of the project. The employment contract of the current holder of the position of Sewer Project Engineer states that the position continues for the duration of the sewer project. Town Manager Bailey testified that he expects the project to be completed in the spring of 1999 at which time the Water and Sewer Supervisor will be in charge of the operation of the completed system.
10. The Deputy Tax Collector is a part-time position and, as such, receives no benefits, holidays or vacation. The position is supervised by the Tax Collector. When the Tax Collector is absent, the Deputy fulfills the duties of the Tax Collector. The Deputy Tax Collector has supervisory responsibil-

ities over the seasonal part-time clerk in the office. There is no job description for the Deputy Tax Collector but documents related to this position's duties in relation to the Tax Collector's duties, were submitted at the hearing. (Union Exhibits 3,4,5).

11. The Assessor or Town Appraiser is a full-time department level position under contract with the Board of Selectmen to appraise property in their stead. RSA 75:1 and RSA 41:2-g. He supervises two full-time clerks, who are in the SEA bargaining unit. The Assessor develops the agency's budget. This position reports to the Town Manager but works for the Selectmen. Pages 1 and 2 of the employment agreement, beginning October 11, 1991 and continuing to October 11, 1993, describe the duties of the Assessor as well as the salary and benefits of this position (Union No. 6). The Assessor has continued in this position since 1993 but no new contract has issued.

DECISION AND ORDER

The legislature delegated to the Public Employee Labor Relations Board authority to determine the composition of bargaining units. RSA 273-A:8. This authority includes deciding questions of modifications to bargaining units. Rule Pub 302.05 provides guidance for reviewing petitions for modifications. Modifications are in order when there have been changes in circumstances since the formation of the bargaining unit that warrant additions or deletions of positions. The Seabrook Supervisory Employees Association bargaining unit has existed continuously since May 18, 1988. It was last modified by agreement with the addition of the Chief Operator-Wastewater Treatment Plant on April 7, 1998.

No explanation was provided as to why the positions under consideration herein were not the subjects of two prior petitions for modification granted on November 11, 1997 and April 8, 1998. Deirdre Green testified that inclusion of the Police Chief was the subject of bargaining between September and January, prior to the last modification, but that the concession to include the Chief had not been won. For that reason and because the department head position of Police Chief has a higher degree of supervisory authority than most department heads in Town

government, and further, because the second and third in the Police Department chain of command recently have been added to the bargaining unit, this position is not bargaining unit appropriate for inclusion in the unit. RSA 273-A:8 II.

The Animal Control Officer supervises no employees but operates as a department head. His responsibilities include scheduling hours, budgeting and purchasing. He reports to the Chief of Police and submits his budget to the Chief. The Animal Control budget then becomes a part of the Police Department budget that goes before the Selectmen. As is the case with the Deputy Chief, this position reports to the Chief of Police. It is appropriate for inclusion in the bargaining unit.

The Sewer Project Engineer must be excluded from the bargaining unit because the position is, by individual contract, a durational or temporary position with no clause that might allow it to become permanent with the passage of time. RSA 273-A:1. The project for which the position was created is being completed and the position could well cease to exist before the next collective bargaining agreement is effective. Considering all of the above, there is no reasonable expectation of continued employment. Keene State College Education Association v. State, 119 NH 1 (1979). This is not a permanent position. According to the CBA, only permanent employees may be included in the bargaining unit. (See Finding No. 3).

The Deputy Tax Collector is named by the Tax Collector, with approval of the Selectmen. (Union Exhibit No. 4). The candidate for the position must swear an oath and be bondable but there are no other qualifications spelled out in the statute, RSA 41:38, and there is no separate job description. In Seabrook, the position is a part-time position working 3 days a week for the last several years. It is a permanent position. The position may be asked to serve or act in the absence of the Tax Collector. The Deputy Tax Collector exercises some supervision. It is the Tax Collector position which is the department head though proscribed from bargaining unit membership as an elected official. RSA 273-A:1 IX (a). The Deputy Tax Collector, second in command, is appropriate for bargaining unit inclusion.

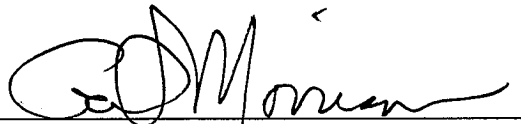
The Assessor was hired under a two year employment agreement in October, 1991 and there has been no subsequent agreement. The conditions of employment and benefits enjoyed by this position as referenced in his employment contract, submitted post-hearing,

have been those of other non-union positions and are not contractually tailored to this position. (Union Exhibit No. 6) The Assessor has continued and can expect to continue in his position overseeing his department. There is a community of interest with this department head and other supervisors and/or department heads in the bargaining unit.

The Police Chief and Sewer Project Engineer may not be added to this bargaining unit because of the provisions of RSA 273-A:8 II and RSA 273-A:1 IX (d) respectively. The Assessor, Deputy Tax Collector and the Animal Control Officer have commonality in terms and conditions of employment and a community of interest with other members of this bargaining unit of municipal supervisory employees. The bargaining unit now shall consist of the following positions: Assistant Recreation Director, Recreation Director, Civil Defense Director, Deputy Town Clerk, Lieutenant Detective, Operations Lieutenant, Deputy Police Chief, Mosquito Control Officer, Welfare Officer, Code Enforcement Officer, Deputy Fire Chief, Water and Sewer Department Superintendent, Chief Operator-Waste Water Treatment Plant, Deputy Tax Collector, Animal Control Officer and Assessor.

So Ordered.

Signed this 7th day of January, 1999.



GAIL MORRISON
Hearing Officer