



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL UNION, UAW	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. M-0758
	:	
TOWN OF PELHAM	:	DECISION NO. 1998-112
	:	
Respondent	:	

APPEARANCES

Representing International Union, UAW:

Vincent Wenners, Jr., Esq.

Representing Town of Pelham:

Gary W. Wulf, Chief Negotiator

Also appearing:

Peter Flynn, Town of Pelham
Stephanie Ferro, U.A.W.
Joe Santos, U.A.W.
Milton "Red" Moran, U.A.W.

BACKGROUND

On September 2, 1998, International Union, UAW, filed a petition to certify a bargaining unit of Pelham town government department heads and supervisors. On September 23, 1998, the Pelham Town Administrator filed an answer objecting to a number of positions on various bases. A hearing was scheduled for October 28, 1998. This hearing was continued at the request of

Attorney Wenners. A hearing was commenced before the undersigned hearing officer on November 20, 1998. The hearing was concluded on December 18, 1998, on which date the record of evidence was closed.

FINDINGS OF FACT

1. The Town of Pelham (Town) employs supervisors, department heads and others to operate its municipal government and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. International Union, United Auto Workers (Union) filed a petition to certify a sixteen position bargaining unit to consist of the following: Town Assessor, Director of Elderly Affairs, Police Chief, Planning Director, Fire Chief, Cable Television Coordinator, Incinerator Supervisor, Parks and Recreation Director, Road Agent, Library Director, Assistant Fire Chief, Town Planner, Deputy Fire Chief (3) and Cemetery Superintendent. Of these, the Town challenges the inclusion of the last five positions. All positions upon which there is no disagreement work under the direction of the Selectmen in the manner of department heads.
3. The Town filed its objection to the formation of a bargaining unit on September 23, 1998. The answer was due on September 17, 1998. The Union raised the matter of a late response at the hearing on November 20, 1998, contending that the Town had waived objection by failing to answer timely.
4. The Union submitted job descriptions for the positions of Town Planner (Union Exhibit No. 4) and Planning Director (Union No. 5) both of which were obtained from a Town employee by Joseph Santos, International Union Representative. Both job descriptions are marked similarly with the date 5/10/93 in handwriting in the right hand corner. The Town Administrator, Peter Flynn, testified that the date was to indicate that they were reviewed as accurate by the Selectmen and Town

Administrator on May 10, 1993. He recalled that, at one time, the Planning Director had urged the Selectmen to consider hiring a Town Planner. The two positions described have some differing and some overlapping duties, both report to the Selectmen. But, Flynn testified, they are different titles for the same job and that the Planning Director performs as the Town Planner. The position of Town Planner has never been filled or funded. No salary is ascribed to the Town Planner in its job description while the Planning Director is to receive a starting salary of \$30,000 for this department head level position.

5. The Cemetery Superintendent (Union Exhibit No. 2) and the Library Director (Union Exhibit No. 8) are Town employees who are employed by boards of trustees, the Cemetery Trustees and the Board of Library Trustees respectively. In both cases, the boards present their budgets to the Board of Selectmen for inclusion in the town warrant to be voted on by the Town Meeting. The funds are paid out to employees in the form of paychecks issued on the Town account in the same way as other Town employees are paid.
6. No written policies governing the Cemetery Superintendent were submitted. Donald E. Foss, Sr., Cemetery Superintendent until May 1998, testified that he had held that position while employed in his current position as Highway Agent. The Cemetery Superintendent position required two to five hours of work a week. The position receives no benefits. Foss received his benefits through his employment as Highway Agent and was paid by Town paycheck for his work as Cemetery Superintendent. He testified that any raises he received as Cemetery Superintendent were approved by the Board of Selectmen and he received direction from the Town Administrator. The job description for the position of Cemetery Superintendent indicates that he is to supervise cemetery workers and to report to the Cemetery Trustees (Union Exhibit No. 2). Though he may work along side the two employees he supervises, he is responsible for participating in budget preparation and he meets with the cemetery board. Essentially, he runs the Cemetery Department from selling plots

to directing graveside funerals. (Union Exhibit No. 17, 1997 Annual Town Report, Report of the Cemetery Trustees, p. 97).

7. The Library Director is a full-time position that supervises numerous full-time and part-time employees and follows policies adopted by the Library Trustees. This position is supervised and evaluated by the Library Trustees according to a plan established by the Board of Library Trustees. This Board has adopted the Pelham Public Library Policies (Town Exhibit No. 11), a twenty-eight page document that sets out terms and conditions under which library employees work.

8. The Pelham Fire Department consists of both regular and "call" employees. There are three full-time firefighters and one full-time lieutenant in addition to the Chief. All work at least thirty hours per week. In addition to the full-time firefighters, the Assistant Fire Chief is a newly created part-time position, the job description for which was supplied to Mr. Flynn by the Fire Department. This is a "call" position and is paid only when called to a fire. This position is second in command to the Fire Chief. Also, there are three Deputy Fire Chiefs, (Union Exhibit No. 11) who are third in command, one of whom may be appointed to be in charge of the Department in the absence of the Assistant Chief. These positions are also "call" positions. Both positions report to the Fire Chief.

DECISION AND ORDER

The legislature has delegated the Public Employee Labor Relations Board the authority to determine, upon petition, whether a proposed bargaining unit is appropriate and, if so, the composition of the bargaining unit pursuant to RSA 273-A:8. Rules promulgated by the Board, RSA 273-A:2 VI, address filing objections to a proposed bargaining unit, Rule 301.02, and informing the Board of mutual agreement of the parties to the establishment of a bargaining unit, Rule 302.01.

Rule Pub 301.02 (j) allows a fifteen day window for filing objections to a petition for certification of a bargaining unit.

The Union contends that the Town's late filing of its objections to the formation of a bargaining unit constitutes a waiver of the right to object. However, Rule Pub 302.01 sets down circumstances under which the PELRB will recognize a mutually agreed upon unit in which case unit determination scrutiny by this Board is relaxed at the unit's initiation prior to election. Review of the bargaining unit by the Board or its designee is in order unless there is an affirmative waiver of objections. Such an affirmative waiver is customarily found in the form of signatures from both parties on the Petition for Certification. There is no such waiver or consensus to be found in this case.

Treating a one week delay in filing objections as a waiver of the opportunity to object is not warranted. The bargaining unit remains subject to bargaining unit determination considerations under RSA 273-A:8 and Rule Section Pub 302. The Town's original objections were unclear and were not amended prior to the hearing. However, two separate hearing dates were devoted to this matter. No prejudice can be claimed to have accrued to the Union since there was ample hearing time to defend against the Town's objections and to make its case.

The bargaining unit requested is a supervisory bargaining unit. The uncontested positions are department heads. Included is the Fire Chief. The Assistant Chief and Deputy Chiefs are not eligible for bargaining unit membership because the Fire Chief, their supervisor, is an appropriate bargaining unit position. RSA 273-A:8 II. Also, the positions have not been shown to share a sufficient community of interest with other positions in the bargaining unit for a combination of reasons. The positions in question are part-time, unscheduled or "call" positions who receive no regular paycheck and enjoy no benefits, and who are middle management and not department head level positions.

The Cemetery Superintendent works few hours and is ultimately responsible to the Cemetery Board of Trustees. However, the position has much contact with regular Town employees and receives informal direction from the Town Administrator and Board of Selectmen. This position supervises employees, is involved in budgeting and directs the day to day operations of the Cemetery Department. (See Finding No. 6) The position follows the same employee policies as others who work for the Town and shares a community of interest with other department heads in this bargaining unit.

The Library Director is a full-time position who directs a staff of Library employees all of whom work under the Library Board policies. The Library operates as a separately structured organization within Town government. Terms and conditions of employment for Library employees may vary from other Town employees and the chain of command does not include the Board of Selectmen. This position reports to the Library Trustees. Budgeting and administrative decisions by this position are carried out within a hierarchy different from the Board of Selectmen. There is not the community of interest necessary for this position to be included in the bargaining unit of Pelham supervisory employees.

The Planning Director is a department head level position responsible to the Selectmen. The position meets the criteria for bargaining unit membership. The Town Planner is a position in name only, never filled nor funded. The former is eligible for bargaining unit membership.

A bargaining unit may be certified for the Town of Pelham's supervisory employees. It shall consist of the following department head level positions: Town Assessor, Director of Elderly Affairs, Police Chief, Fire Chief, Cable Television Coordinator, Incinerator Supervisor, Parks and Recreation Director, Road Agent, Cemetery Superintendent and Planning Director.

So ordered.

Signed this 15th day of January, 1999.



Gail C. Morrison
Hearing Officer