



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAMPTON FIRE DEPARTMENT
SUPERVISORY ASSOCIATION,
LOCAL 3017, IAFF

Petitioner

v.

TOWN OF HAMPTON

Respondent

CASE NO. F-0127:6

DECISION NO. 1999-009

APPEARANCES

Representing Hampton Fire Department Supervisory Association:

Glenn Milner, Esq., Counsel

Representing Town of Hampton:

Renny Perry, Consultant

Also appearing:

William Sullivan, Town of Hampton
Jean Hamilton, Local 3017
Jane Plummer, Local 3017
William Welsh, Local 3017
Robert Regan, Local 3017
Richard Hamilton

BACKGROUND

On October 1, 1998, the Hampton Fire Department Supervisory Association, Local 3017, IAFF filed a petition to modify its bargaining unit. The petition requested the addition of the position of Administrative Assistant. The Town of Hampton answered with its objections on October 16, 1998. Hearings were scheduled and continued on November 18, 24 and December 14,

1998. A hearing was held before the undersigned hearing officer on January 5, 1999. At the hearing, the petition to modify the bargaining unit was amended to allow corrections to position titles and to reflect new positions added to the department. The record remained open for the receipt of job descriptions and these were received from the Town on January 6, 1999.

FINDINGS OF FACT

1. The Town of Hampton (Town) employs firefighters and other personnel to operate the Hampton Fire Department and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Hampton Fire Department Supervisory Association (Union) is the duly certified bargaining representative for certain personnel described in the certification document to be: Deputy Chief, Fire Prevention Inspector, Lieutenants and Secretary. Certification took place on September 30, 1985, after a unit determination hearing on August 20, 1985 that resulted in Decision No. 1985-068.
3. PELRB records reflect that the question of inclusion of the secretarial position in the bargaining unit was a subject of the above referenced unit determination hearing. Though neither party was aware or was forthcoming regarding the existence of the prior decision, this decision is noted as it is part of the ongoing record of the bargaining unit. RSA 273-A:16.
4. The Union and the Town are parties to a collective bargaining agreement (CBA) for the period of April 1, 1994 through March 31, 1997 (Joint Exhibit No. 1) that was succeeded by a CBA for the duration April 1, 1997 through March 31, 2000 (Joint Exhibit No. 4). The Recognition Clauses of these CBA's contain identical unit descriptions: Deputy Fire Chief, Fire Captain, Fire Lieutenant, Fire Prevention Officer, Fire Inspector and Secretary.
5. It was stipulated by the parties that the new position of Administrative Assistant and the old bargaining unit position of Secretary are substantially identical. Indeed, the Town admits that it created this position to be exempt from bargaining unit membership under the premise that the work performed

by the position, Secretary, now called Administrative Assistant, is confidential in nature and that it is the Town's right to add positions to its organization under RSA 273-A:1 XI.

6. Former Fire Chief William H. Sullivan testified that it was an error to have included the Secretary's position in the bargaining unit in the first place. That is the reason the Town's representative states for having acted to remove the secretarial work from within the bargaining unit by assigning it to a new exempt position entitled Administrative Assistant.
7. Jean Hamilton had held the position of Secretary at the time of bargaining unit formation. On September 30, 1997, Hamilton retired from her position with the Hampton Fire Department. Before leaving, she trained her replacement, Jane Plummer, to perform her job. The training took place over a period of about two weeks.
8. Jane Plummer testified that she began work under the title of Administrative Assistant on September 17, 1998. She learned and then performed the job done by Secretary Jean Hamilton with no change in duties of which she is aware. However, Plummer works more hours for the same pay as that of the former Secretary. The position of Secretary remains on the books unfilled.
9. Job descriptions for Administrative Assistant (Joint Exhibit No. 2) and Secretary (Joint Exhibit No. 3) are in the record. The former job description is more detailed than the latter and was drawn up with the help of the management representative to describe the position in terms that suggest bargaining unit exclusion. (Duties No. 7, 8 and 10 in Joint Exhibits No's. 2 and 3).

DECISION AND ORDER

RSA 273-A:8 places jurisdiction over bargaining unit determination with the Public Employee Labor Relations Board. Included is jurisdiction over modifications of bargaining units. Appeal of Londonderry School District, 142 NH _____, _____ (March 23, 1998). Regulation Pub 302.05 provides the conditions under which modification is in order. Essentially, these conditions are a continuing substantial error that existed at the time of

certification of the bargaining unit or change in circumstances after the formation of the bargaining unit.

This is a simple matter made complex because the parties have reversed the roles generally taken when a situation such as this occurs. The Union asks to add a position to the bargaining unit that is and always has been a bargaining unit position. The Union has done so in response to the Town's actions taken to ensure that the position performing secretarial work is outside the bargaining unit. Essentially, though described otherwise, the Town has attempted to unilaterally modify the bargaining unit. It may not do so. See Appeal of Londonderry, 142 NH (1998). The usual response to such an action of unilateral modification is the filing of an unfair labor practice charge rather than a modification petition. It is the Town's unilateral modification that is examined herein.

No change in circumstances has occurred that warrants the modification. That fact is reflected in the stipulation of the parties reached at the outset of the hearing that the old position of Secretary is substantially identical to the new position of Administrative Assistant. Jane Plummer, in the Administrative Assistant position, is performing duties that Jean Hamilton had performed for eighteen years while holding the position of Secretary. The only underlying change is in personnel, namely the exchange of Jean Hamilton for Jane Plummer with no change in job duties.

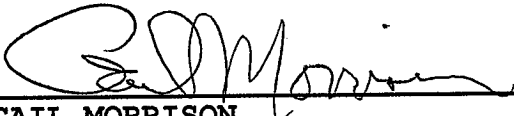
Chief Sullivan believes the position of Secretary never belonged in the bargaining unit. However, the PELRB has previously reviewed the position of Secretary and the nature of the work performed by the Secretary, now the Administrative Assistant, and no appeal was taken from the Board's determination that the position was a proper bargaining unit position. Decision No. 1985-068 (1985). The Town has shifted that work from a bargaining unit position to a newly created non-bargaining unit position with a loss of wages and protections to the holder of the "new" position. Without such a shift of work outside the bargaining unit, the Administrative Assistant position is but a shell. It is a "new" position in name only. Were the outcome of this convoluted dispute not subject to the doctrine of *res judicata*, the employer would be required to institute the proper procedure with the filing of a petition for modification. However, administrative economy dictates a different course.

The PELRB has heretofore addressed and ruled on the question presented. Titled Secretary or Administrative Assistant, it is the same position. (See Finding No. 5). The position has been deemed appropriate for bargaining unit membership following a hearing before the Board. The matter has been finally adjudicated between the parties and for jurisdictional reasons cannot be revisited.

The modification of the bargaining unit to reflect changes in the position titles and the addition of positions as given in the collective bargaining agreements is granted. The bargaining unit positions are now as recited in the Recognition Clause, Article II of the collective bargaining agreement (Joint Exhibit No. 1). On the original subject of the petition, the unilateral modification without benefit of process is null. The previous disposition of the Board, Decision No. 1985-068, regarding the position of Secretary stands. It is expected that the Town will restore bargaining unit status to the one employee harmed by its actions lest the Union seek its remedies.

So ordered.

Signed this 10th day of February, 1999.


GAIL MORRISON
Hearing Officer