



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CITY OF MANCHESTER, POLICE  
DEPARTMENT

Complainant

v.

MANCHESTER ASSOCIATION OF  
POLICE SUPERVISORS

Respondent

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CASE NO. P-0716:10  
(UNIT MODIFICATION)

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MANCHESTER ASSOCIATION OF  
POLICE SUPERVISORS

Complainant

v.

CITY OF MANCHESTER, POLICE  
DEPARTMENT

Respondent

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CASE NO. P-0716:9  
(UNFAIR LABOR PRACTICE)

DECISION NO. 2000-007

APPEARANCES

Representing City of Manchester:

David Hodgen, Chief Negotiator

Representing Manchester Association of Police Supervisors:

Vincent Wenners, Esq.

Also appearing:

Paul Beaudoin, Manchester Association Police Supervisors  
Howard Tawney, City of Manchester  
Mark Driscoll, City of Manchester  
Dale Robinson, City of Manchester

BACKGROUND

The City of Manchester Police Department (City) filed a modification petition with the Public Employee Labor Relations Board (Board) on September 22, 1999 seeking to remove the position of Business Services Officer II (BSO) from the bargaining unit represented by the Manchester Association of Police Supervisors, otherwise referred to as the "Union" in these proceedings. The Manchester Association of Police Supervisors (MAPS) filed its response and objections thereto on October 12, 1999. The Union then filed an unfair labor practice (ULP) against the City on October 25, 1999 alleging violations of RSA 273-A:5 I (a), (b), (c) and (d) as a result of the City's having agreed that the Business Services Officer position was appropriate for inclusion in the bargaining unit and later having reneged on that agreement when the incumbent departmental business services officer also became the Union president and chief negotiator. The City filed its answer to the ULP on November 12, 1999.

Both matters were consolidated and set for hearing before the PELRB on November 30, 1999 and December 7, 1999. At the commencement of those hearings, the parties agreed to proceed with the unit modification petition first, with the thought that its disposition may also be dispositive of the subject matter of the ULP. Thus, the ULP was held in abeyance pending the outcome of the modification proceedings. At the conclusion of their respective presentations on December 7, 1999, the parties were assigned a post-hearing briefing schedule which required their briefs to be filed by January 7, 2000, after which the record in the modification proceedings was closed.

FINDINGS OF FACT

1. The City of Manchester, by and through its police department, is a "public employer" within the meaning of RSA 273-A:1 X.

2. The Manchester Association of Police Supervisors is the duly certified bargaining agent for employees of the Police Department in the job classifications of police sergeant, police lieutenant, police captain, director of training, business services officer II, police records supervisor, equipment maintenance superintendent, ordinance violations bureau supervisor and dispatch supervisors.
3. The City and the Union are parties to a collective bargaining agreement for the period July 1, 1998 through June 30, 1999 and continuing at all times pertinent thereafter under *status quo* provisions. The position of business services officer II is referenced at Article 1.1 and Article 8.3 of the CBA.
4. The City filed a modification petition on September 27, 1999 seeking to remove the Business Service Officer II position from the bargaining unit because it is, or has become, confidential in nature, as defined by RSA 273-A:1 IX (c). This particular bargaining unit was formed in approximately 1970 and pre-dates the passage of RSA 273-A. Between that time and the filing of the modification petition, there have been no assertions of "confidentiality" relating to the business services officer II position.
5. The incumbent BSO, Paul Beaudoin, has been so employed in that capacity for approximately five years. He was formerly a member of the Manchester Police Patrolmen Association (MPPA) and is currently a member of MAPS, having become President as well as the chief negotiator for the MAPS bargaining unit in the spring of 1999. He was hired under a position vacancy posting for "Business Service Officer II" which had a closing date of July 13, 1994 (City Exhibit No. 2). Under that portion of the posting entitled "The Job," one sentence reads, "Performs administrative, personnel, labor relations, purchasing and inventory control duties as required, reviews effectiveness of data processing systems and makes recommendations for improvements." (Emphasis added.) Notwithstanding this, Beaudoin testified that he did not believe any of the functions he performs as BSO would qualify as

being confidential to the labor relations functions of the police department as an employer. By way of examples, he stated (1) that any cost estimates which he has prepared for the police department were generated as the result of applying given percentages to known cost figures, (2) that he did not take financial proposals to the table for management, (3) that he prepared certain benefit costs (e.g. sick leave and uniform allowances) but that the City's Human Resources Department prepared "package" costs, because it had the resources to perform raw data calculations (e.g., City Exhibit No. 16) and (4) that he is not called in to meet or develop strategies with the City's labor negotiators or the Chief's strategy team prior to actual negotiating sessions.

6. After Beaudoin was hired as the result of the job posting (City Exhibit No. 2), he was called to meet with then Assistant Chief (now Chief) Mark Driscoll on or about September 20, 1994. In the course of that meeting, Driscoll gave Beaudoin a typed letter which said, in part:

This is also a position that deserves and requires the fullest trust and confidence of the Administration. You will have access to information involving not only the financial matters of the Police Department, but personnel issues, union negotiations and the administrative strategies involved in the decision making process. Confidentiality is a must.

City Exhibit No. 3.

Notwithstanding this letter, Driscoll testified that problems with Beaudoin's serving both as a resource for management data to be used in negotiations and simultaneously serving as president and chief negotiator for MAPS did not materialize until Tony LaPore retired as president of the MAPS unit and Beaudoin assumed those responsibilities. Driscoll said this caused him to conclude that the matter of defining responsibilities had to be resolved and that a modification petition must be filed. Describing Beaudoin as his "top financial officer," Driscoll said this person must be "someone I can count on and know that information will go no further." He said that

Beaudoin has become the person in his department whom he needs to consult on financial and personnel issues. Beaudoin's role becomes confusing at the negotiating table when it is he who is seeking a benefit on behalf of MAPS and who may have costed that very issue for management. Driscoll described himself as being "totally dependent on [Beaudoin's] skills and abilities in the spending of an eleven million dollar budget." Driscoll may deal with Beaudoin directly or through Deputy Chief Robinson.

7. Dale Robinson, currently Deputy Chief for Administration, was formerly president of the MAPS bargaining unit; however, since he was not a BSO when in that capacity, he was not involved in budget or cost projections associated with collective bargaining. During the first MAPS negotiating session with management on February 22, 1999, LaPore told him that Beaudoin was coming on the MAPS negotiating team. Robinson testified that he trusts Beaudoin and his abilities but frequently cannot tell the capacity in which he is acting. This confusion did not exist until consolidated bargaining started in April of 1999 with twelve union presidents facing management negotiators across the bargaining table. Beaudoin appeared on the MAPS team during consolidated bargaining and actually gave MAPS bargaining proposals to management in the course of negotiations. By May of 1999, Beaudoin had started signing tentative agreements on behalf of MAPS (City Exhibit Nos. 10 and 11). In April of 1999, Beaudoin generated and provided Robinson with scenarios of where and how costs savings would be found if a 1% or 2% budget cut were to be implemented, inclusive of identifying vacant or to-be-laid-off bargaining unit positions. (City Exhibit No. 12). Robinson acknowledged that Beaudoin "crunches numbers" and then provides data to Driscoll and City Negotiator Hodgen. He has no authority to make or accept offers.
8. There are three job descriptions for the BSO which are germane to these proceedings. The 1989 version pertains to a BSO generally, within the Manchester Police Department, and makes no reference to "labor relations" or any confidential functions. (Union

Exhibit No. 1.) The closest requirement thereto is the need for "considerable knowledge of financial, personnel and administrative management." The more specific BSO "II" job description, dated as being reprinted in April, 1987, makes a reference to "performs administrative, personnel, labor relations, purchasing and inventory control duties as required ...." without further reference to confidential functions. (City Exhibit No. 4.) The 1987 version is not specific to the police department. The most recent "class specification" for business services officers, which is predated by Driscoll's letter of September 20, 1994 (City Exhibit No. 3), has no Roman numeral designator and is not specific to any given department (City Exhibit No. 5). That document makes no reference to "labor relations" functions. The closest similar "required skills" listed therein are (1) through knowledge of Fair Labor Standards Acts and other laws, (2) principles and practices of personnel administration within the public sector, (3) ability to effectively deal with difficult people in [a] diplomatic and professional manner, and (4) ability to handle confidential and administrative information with tact and discretion.

9. Driscoll continued to use Beaudoin to generate financial data after he became president of MAPS and its chief negotiator. There has been no suggestion in these proceedings that Beaudoin breached his responsibilities to the City. For that matter, Robinson commented that "he has never misled us."
10. Beaudoin recognized, in his testimony, that the police department expressed concerns about his role, first, when he became treasurer for MAPS and then more strenuously when he became president and chief negotiator. Beaudoin testified it was his position as local president which caused Driscoll more concern than his position as chief negotiator, something he learned as the result of asking the Chief if the problem would go away if he resigned as president of MAPS or as chief negotiator. In unrelated testimony which proceeded Beaudoin's testimony, Driscoll said Beaudoin became a problem when he became active on the union side of the consolidated bargaining team

for the City's various unions and that this activity impacted his confidential relationship with the chief as his superior. Driscoll said that if Beaudoin quit as the MAPS negotiator, it would still be better if he were out of the bargaining unit.

#### DECISION AND ORDER

The bargaining history of the parties extends over three decades and, during that time, has included the departmental business services officer (City Exhibit No. 1). The current BSO, Beaudoin, has served in that capacity since 1994. From the inception of the departmental BSO position in December of 1970 until the spring of 1999, there is no evidence that there has ever been any challenge to the inclusion of the BSO position in the bargaining unit. Likewise, from 1970 until the date of the hearing in this case, there is neither a history nor any suggestion that the current or prior BSO's served less than faithfully, diligently and honestly on behalf of their employer.

It is ironic that the most current "class specification" for BSO (City Exhibit No. 5) is the least specific of any of the various versions of that document with respect to labor relations functions or the need for confidentiality relating thereto. Obviously, then, this was not a concern when that document was regenerated sometime in the last part of 1998, especially when compared to City Exhibit Nos. 2, 3 and 4, all of which are chronologically older than City Exhibit No. 5. (Finding No. 8, above.)

Likewise, we observe that Beaudoin's work was reported as being far above satisfactory, based on the praise and statements of reliance attributed to his efforts by both Driscoll and Robinson. (Finding Nos 6 and 9.) Beaudoin's efforts and assignments on behalf of the department and the City have not changed since he took the BSO position in 1994, as evidenced by City Exhibit No. 7 dated March 23, 1998 and City Exhibit No. 8 dated April 6, 1998. From this history and the history of Beaudoin's predecessors, and Felch and Tousignant, neither of whom were active in MAPS (City brief, page 9), we conclude that there is nothing inherently destructive of the labor relations process as contemplated by RSA 273-A, the obligations thereunder or the confidential exclusion under RSA 273-A:1 IX (c) which

results from having the position of the BSO in the bargaining unit.

Then, Beaudoin's role changed in the spring of 1999. (Finding Nos 7 and 10.) Beaudoin went on the bargaining team, became president of the local and assumed responsibilities as its chief negotiator, all of which was either self-induced or consensual on his part, i.e., it appears that he could have avoided assuming these additional duties on behalf of the bargaining unit and MAPS. Concurrently, Beaudoin was "crunching numbers" and creating alternative costing scenarios for management (Finding No. 7 and City Exhibit Nos. 12, 13 and 14) in the midst of assuming these new union duties.

While Appeal of City of Laconia, 135 N.H. 421, 423 (1992), suggests that "merely statistical" data may be public, non-confidential information insufficient to invoke "confidential employee" status under RSA 273-A:1 IX (c), that case also requires us to look to the totality of the employee's job functions to insure that his or her union activities do not hinder management's ability "to prepare for and conduct labor relations and labor negotiations." Appeal of City of Laconia, 135 N.H. 424-425 (1992). We conclude that Beaudoin's newly assumed union duties, on their face, create such a hindrance. Once Beaudoin undertook his new union duties, this moved him from a passive MAPS participant, as Felch and Tousignant had been, to one whose loyalties, either practically, apparently or both, would be divided between the union and the City. This is to be avoided since failure to do so would be counterproductive to the labor relations process, inconsistent with RSA 273-A:1 IX (c) and the case law developed thereunder. Appeal of the Town of Newport, 140 N.H. 343, 347 (1995).

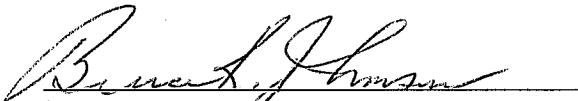
Consistent with the foregoing and, in particular, with the nearly thirty (30) years of congenial cooperation within the bargaining unit which we have noted, we direct that the business services officer (BSO) position be removed from the bargaining unit should the incumbent elect to continue to occupy and perform the duties of president of the local and of its chief negotiator for a period of more than thirty (30) days from the date hereof. If the incumbent business services officer shall relinquish the performance of those duties within the next thirty (30) days with the intent to abstain therefrom in the future, the composition of the bargaining unit shall remain unchanged and the business services officer position shall remain in the bargaining unit,



consistent with the *status quo* and the manner of labor-management relations utilized by the parties for more than three decades. In the meantime, the ULP (Case No. P-0716:9) shall stand continued on the PELRB's docket of cases for a period of forty (40) days after the date hereof. If neither party requests further hearing of that ULP within the aforesaid forty (40) day period, it shall thereafter be administratively dismissed from the PELRB's docket of cases.

So ordered.

Signed this 9th day of February, 2000.

  
BRUCE K. JOHNSON  
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members Seymour Osman and E. Vincent Hall present and voting.