



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Chauffeurs, Teamsters and Helpers		*
Local Union 633 of NH		*
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	Petitioner	*
		*
	v.	*
		*
Town of New Ipswich		*
	Respondent	*
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Case No. G-0059

Decision No. 2008-019

APPEARANCES

Representing Teamsters Local 633 of New Hampshire:

Kevin Foley
Chauffeurs, Teamsters and Helpers Local Union 633 of NH, Manchester, New Hampshire.

Representing Town of New Ipswich:

Raymond Mello, Esq.
Bernstein, Bartis & Mello, P.L.L.C., Nashua, New Hampshire.

BACKGROUND

On January 2, 2008 the Chauffeurs, Teamsters and Helpers Local Union 633 of NH ("Union") filed a Written Majority Authorization Petition seeking certification as the exclusive representative via written majority authorization cards ("WMA cards") of a proposed bargaining unit consisting of police officers, highway department employees, and transfer station employees. The Town filed its objections to the petition on January 17, 2008. The Town contends that the proposed unit improperly includes a confidential employee and that there is no community of interest since the police employees have no desire to be part of the proposed bargaining unit. The Town also contends that some of the highway or landfill department employees are probationary employees and therefore cannot submit WMA cards.

The undersigned hearing officer conducted a hearing on the petition on February 4, 2008 at the PELRB in Concord. Both parties had the opportunity to submit exhibits and present evidence through direct and cross-examination of witnesses. At the close of evidence the parties argued their respective positions and submitted the case for decision.

FINDINGS OF FACT

1. The Town of New Ipswich is a public employer within the meaning of RSA 273-A.
2. The Chauffeurs, Teamsters and Helpers Local Union 633 of NH is an employee organization that seeks to represent employees of the Town for purposes of collective bargaining pursuant to RSA 273-A.
3. Neil Beauregard is a one year employee of the Highway department whose current duties include truck driver and laborer responsibilities. He previously worked as a foreman in the same department. Mr. Beauregard testified at the hearing.
4. W. Garrett Chamberlain has been the Chief of Police since November, 2002. He also served as the interim road agent from May, 2007 to January, 2008. Chief Chamberlain testified at the hearing.
5. Marie Knowlton has served as the town administrator for two years. Ms. Knowlton testified at the hearing.
6. Chief Chamberlain maintains personnel files for police department employees, which includes the 3 full time patrol officers and the 3 part time permanent patrol officers. These positions are part of the proposed unit. New patrol officers are placed on 6 months probation, a process the Chief reviews with the new hires when they are hired and when their probationary period ends. The police officers have expressed their opposition to being included in the proposed bargaining unit.
7. Chief Chamberlain does not maintain personnel records for employees of the highway department or the transfer station.
8. When Mr. Beauregard was hired he understood that he was not eligible for a raise for the first 6 months of his employment, but he did not understand nor was he informed that the first 6 months of his employment were probationary.
9. Ms. Knowlton did not address the probationary status of highway or transfer department employees in her testimony.
10. At hearing the Teamsters withdrew the position of police secretary support staff from the proposed unit.

11. In August, 2003 the Town agreed to a similar unit consisting of all full-time and permanent part-time Police, Office, Highway & Transfer station employees. Following an election, the board certified New Ipswich Town Employees/SEA-SEIU Local 1984 as the unit's exclusive representative. In June, 2007 the SEA-SEIU Local 1984 surrendered its certification. The parties did not submit evidence concerning the bargaining history of this previously certified unit.

DECISION

JURISDICTION

The PELRB has jurisdiction over petitions to determine public employee bargaining units and certify exclusive representatives pursuant to the provisions of RSA 273-A:8 and 10.

DISCUSSION

The Union seeks to be certified as the exclusive representative of the proposed bargaining unit through written majority authorization cards ("WMA cards") signed by a majority of employees in the proposed bargaining unit. This is a new procedure available under RSA 273-A:10, IX. The procedure eliminates the use of a secret ballot election to determine the representation of a new bargaining unit. Board rules governing the WMA card certification procedure are set forth in Pub 301.05. In the event there is agreement as to the composition of the proposed bargaining unit, the sufficiency of WMA cards can be determined by the PELRB or a neutral third party agreed upon by the petitioner and the public employer. However, the PELRB will determine the appropriate bargaining unit in accordance with RSA 273-A:8 and Pub 302.02 in all cases where there are objections to the composition of the proposed bargaining unit, and in such cases the PELRB will determine the sufficiency of the WMA cards as well.

In this case the Union elected to file its WMA petition with the PELRB and have the PELRB determine the sufficiency of the WMA cards. Since the Town filed objections to the composition of the bargaining unit, the determination of the sufficiency of the WMA cards was deferred pending the hearing on the appropriateness of the proposed bargaining unit. This is in accord with RSA 273-A:10, IX, which requires a determination of whether there is a sufficient written majority authorization within the appropriate bargaining unit, and Pub 301.05, which requires, in contested cases such as this one, a hearing upon and determination of the bargaining unit before the sufficiency of WMA cards can be determined.

RSA 273-A:8, I requires that a proposed bargaining unit contain at least 10 public employees with the same community of interest. RSA 273-A:1, IX excludes persons in a probationary status and those employees "whose duties imply a confidential relationship to the public employer" from the definition of "public employee," although probationary employees can be counted to meet the 10 person requirement.

As to the Town's objections to any WMA cards submitted by probationary employees, there is insufficient evidence to show that highway or transfer department employees are placed on a probationary status at the time they are hired. Accordingly, the Town's objections to the petition based upon the purported probationary status of certain highway/transfer station employees are dismissed on that basis.

The Town also contends that employees in the proposed bargaining unit lack the requisite community of interest on account of the police officers' opposition to their inclusion in the proposed bargaining unit. Community of interest is a factor taken into account when determining an appropriate bargaining unit. *See* RSA 273-A:8, I. The board's rules address community of interest in detail:

Pub 302.02 Additional Criteria for Determining Appropriate Bargaining Units.

- (a) An appropriate bargaining unit shall be characterized by the existence of a community of interest shared by its members.

- (b) In determining the appropriate bargaining unit, the board shall consider the following as evidence of a community of interest, in addition to the elements set out in RSA 273-A:8, I(a) through (d):
 - (1) A Common geographic location of the proposed unit;
 - (2) The presence of:
 - a. Common work rules and personnel practices; and
 - b. Common salary and fringe benefit structures; and
 - (3) The self-felt community of interest among employees.

In this case there is insufficient evidence to establish a community of interest among the employees in the proposed bargaining unit. The testimony on the issue showed that a self-felt community of interest is lacking as to police officers, as they are opposed to being included in the proposed bargaining unit. The likely basis for such a lack of self-felt community of interest as between police officers and highway/transfer station employees is evident when the generally accepted and distinct differences between the job responsibilities and conditions of employment of police officers and highway/transfer station employees are considered. There is also insufficient evidence of the presence of common work rules and personnel practices and common salary and fringe benefit structures as between police officers and highway/transfer station employees. There is also insufficient evidence of other factors relevant to whether there is a community of interest amongst the employees in the proposed bargaining unit, such as the employees having a history of workable and acceptable collective negotiations or being in the same historic craft or profession. *See* RSA 273-A:8, I.

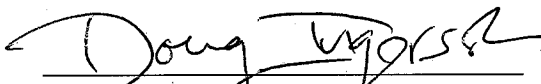
The Union relies upon the 2003 certification of a similar bargaining unit involving a

different representative as justification for the appropriateness of the bargaining unit it has proposed in this case.¹ In the earlier proceeding the Town agreed to the composition of the similar bargaining unit, and the matter proceeded directly to election. The board has previously distinguished between the level of scrutiny applicable to unit composition in the case of an agreed upon unit and the level of scrutiny applicable to unit composition in a contested case. See *Bow School District v Bow Educational Support Staff/NEA-NH*, PELRB Decision No. 2002-033 (involving a closer examination of the composition of a previously agreed upon unit in a modification proceeding). A "more thorough scrutiny" is warranted in this case because the composition of the unit is contested. The fact that the Town previously agreed to the composition of a similar unit in 2003 is a factor to consider, but it is not conclusive as to the appropriateness of the proposed unit currently under consideration. In this case, the evidence of the previously agreed upon unit is relevant and probative, but it is insufficient to overcome the contemporary evidence concerning a lack of community of interest as between police patrol officers and highway/ landfill employees. Accordingly, the police officer positions must be excluded from the proposed bargaining unit.

After the exclusion of the police officer positions, the size of the proposed unit is reduced to 8 employees, an insufficient number under RSA 273-A:I (d). Accordingly, the Teamster's petition is dismissed.

So ordered.

February 5, 2008.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Kevin Foley
Roger Travers
Raymond Mello, Esq.

¹ Case No. M-0805, PELRB Decision No. 2003-098, certification surrendered by the SEA/SEIU Local 1984 in June, 2007- PELRB Decision No. 2007-094.