



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of NH/Newmarket Public Works Employees		*	
		*	
		*	
		*	
	Petitioner	*	Case No. G-0063-1
	and	*	
		*	Decision No. 2008-127
Town of Newmarket		*	
	Respondent	*	
		*	

APPEARANCES

Representing Teamsters Local 633 of NH/Newmarket Public Works Employees:

Richard Laughton,
Business Agent, International Brotherhood of Teamsters, Manchester, New Hampshire

Representing Town of Newmarket:

J. Joseph McKittrick, Esq.
McKittrick Law Offices, North Hampton, New Hampshire

BACKGROUND

The Teamsters Local 633 of NH/Newmarket Public Works Employees filed this Petition for Certification on February 6, 2008 seeking the certification of a bargaining unit composed of certain public works employees in the town of Newmarket. The town filed its objections on February 29, 2008. A hearing scheduled for March 14, 2008 was continued at the town's request and with the consent of the petitioner. The undersigned hearing officer conducted a hearing on

the rescheduled date of April 2, 2008. At the outset and during the course of the hearing the parties clarified that the composition of the proposed unit is as follows:

Full Time Department of Public Works Employees: Highway Foreman, Buildings and Grounds Supervisor, Wastewater Treatment Plant Operator, Wastewater System Tech, Wastewater Operator I/Facility Mechanic, Drinking Water Operator, Secretary, Laborer, Truck Drivers/Laborers, Equipment Operators, Mechanic. Excluded: Public Works Director, Assistant Public Works Director.

The town claims the proposed bargaining unit improperly contains a confidential employee (secretary) as well as three supervisory employees (highway foreman, buildings and grounds supervisor, wastewater treatment plant operator). Both parties had the opportunity to examine and cross-examine witnesses and offer exhibits. At the close of evidence the parties argued their cases and the record was closed.

FINDINGS OF FACT

1. The petitioner is an employee organization within the meaning of RSA 273-A:10.
2. The town is a public employer subject to the provisions of RSA 273-A:1, X.
3. John Puchlopek has been the buildings and grounds supervisor for 4 years. He is paid on an hourly basis and is eligible for overtime. The buildings and grounds department also includes another full time employee, laborer Karen Glidden, and a part time employee.
4. Rick Malasky is the Director of Public Works. He interviewed Mr. Puchlopek for the position of buildings and grounds supervisor and told him not to worry about the budgetary process, as he (Mr. Malasky) would take care of it. Mr. Puchlopek has not been involved in the budgetary process. Mr. Malasky also told Mr. Puchlopek at the time of his hire that the buildings and grounds supervisor job is a working position.

5. In the winter Mr. Puchlopek functions like an employee of the highway department, essentially working as a member of the plowing crew. His winter duties include running the sidewalk plow and sanding and salting.
6. In the summer Mr. Puchlopek's work relates to buildings and grounds matters. He runs a weedwacker, a mower, and a tractor. He also cleans floors.
7. Laborer Karen Glidden essentially works independently, as she is familiar with her responsibilities and routines, many of which are janitorial in nature. She also mows lawns. Mr. Puchlopek does not provide Ms. Glidden with any notable instruction or oversight.
8. Mr. Puchlopek is not involved in hiring and firing, and does not regularly discipline employees. At some point Mr. Malasky received a letter in connection with a problem involving the police and a janitor. Mr. Malasky directed Mr. Puchlopek to provide a verbal warning to the involved janitor.
9. Mr. Puchlopek has only completed employee evaluations once, approximately one year ago. They were evaluations of Karen Glidden and a part time janitor. Mr. Puchlopek completed a written form and returned it to Mr. Malasky.
10. Bruce Rowe has worked for the public works department since 1988, initially as a truck driver, then an equipment operator, and currently as highway foreman. He is paid on an hourly basis and is eligible for overtime. He is not involved in the budget process, and has not routinely completed employee evaluations, having only done so twice in 10 years. According to Mr. Rowe, Mr. Malasky completes the employee evaluations most of the time. Mr. Rowe completed an employee evaluation form in 2007, presented it to Mr. Malasky for review, who then directed Mr. Rowe to change part of the evaluation. Mr. Rowe then reviewed the evaluation with the employee.

11. Mr. Rowe is not involved in hiring and firing, nor does he have responsibility for employee discipline. According to Mr. Rowe, Mr. Malasky is responsible for and handles employee discipline.
12. Each morning public works department employees gather in the cafeteria and Mr. Malasky reviews what he wants done. Sometimes Mr. Malasky assigns specific tasks to specific employees, other times he relies on Mr. Rowe to make the individual assignments.
13. Mr. Rowe operates equipment as needed and works with department crews just as Hector Hernandez, the department's equipment operator, directs the crews with which he works.
14. Mr. Rowe does not have formal disciplinary authority but he has prepared and submitted a personnel action report to Mr. Malasky in which he complains about the performance of another employee. Mr. Rowe does not issue formal verbal warnings to employees but he will, for example, tell an employee who is not actively working at a job site to return to work. Mr. Rowe refers any more significant employee issues to Mr. Malasky.
15. Sean Craig is the wastewater treatment plant operator. He is paid on an hourly basis and is eligible for overtime. He has prepared employee evaluations but not on a regular basis, and could reprimand an employee with the approval of the town administrator. Mr. Craig works with the assistant director of public works, who also serves as the superintendent of water and sewer. Mr. Craig meets with the assistant director at 7:00 a.m. every day. Mr. Craig has reviewed employment applications and has participated in the interview process.
16. Brenda Mallock is the public works department secretary. Her administrative duties include overseeing department record keeping, including typing information for inclusion in personnel files. She maintains the disciplinary records in a locked file cabinet and opens

department mail, including any correspondence from counsel. She assists in the preparation of the budget, including matters such as the addition or removal of positions in the budget.

17. Position descriptions for all 4 employees are contained in Town Exhibits B, C, D and E.

DECISION

DECISION SUMMARY:

The positions of highway foreman, buildings and grounds supervisor, and wastewater treatment plant operator are included in the bargaining unit. The evidence was insufficient to establish that the duties and responsibilities of these positions in the areas of discipline, evaluations, hiring, firing, and supervision qualify the individuals who hold these positions as persons who exercise supervisory authority involving the significant exercise of discretion who therefore may not belong to the same bargaining unit as the employees they supervise. The position of secretary is excluded from the bargaining unit as the duties and responsibilities of this position imply a confidential relationship to the public employer. This matter shall proceed to election.

JURISDICTION:

The PELRB has jurisdiction of all petitions to determine bargaining units and to conduct elections pursuant to RSA 273-A:8 and 10.

DISCUSSION:

RSA 273-A:8, II provides that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." Important factors to consider include an "employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority." *Appeal*

of *Town of Stratham*. 144 N.H. 429, 432 (1999) (citing *Appeal of East Derry Fire Precinct*, 137 N.H. 610 (1993). "The mere fact that they (putative supervisory positions) have such authority, regardless of whether it is presently exercised, is sufficient for us to hold that they are supervisors under the statute." *Appeal of Univ. System of New Hampshire*, 131 N.H. 368, 376 (1988). Supervisory employees are generally separated from rank and file employees because there is "a strong potential for a conflict of interest to arise between the two groups." *Id.* "[S]ome employees performing supervisory functions in accordance with professional norms will not be vested with the 'supervisory authority involving the significant exercise of discretion' described by RSA 273-A:8, II." *Appeal of East Derry Fire Precinct*, 137 N.H. at 611. It is therefore proper to examine the degree of significance of the exercise of discretion as well as the propensity to create conflict within the bargaining unit because of the differing duties and relationships. See *Londonderry Executive Employee Association v. Town of Londonderry*, PELRB Decision No. 2001-118. See also *Tilton Police Union, NEPBA Local 29 v. Town of Tilton*, PELRB Decision No. 2007-100.

The facts in this case establish that the highway foreman, buildings and grounds supervisor, and wastewater treatment plant operator assign and supervise work. All three positions also spend a substantial amount of time completing work, like equipment operation, snow removal, maintenance activities, and other work similar in nature to that performed by their co-employees. The highway foreman will operate equipment and run a crew in the same manner as the department's formal equipment operator. The buildings and grounds supervisor has worked during the winter months as essentially another employee of the highway department, having responsibility to sand, salt, and run the sidewalk plow. Although the evidence was less detailed about the wastewater treatment plant operator's duties, his position description, like

those of the highway foreman and the buildings and grounds supervisor, is lengthy and detailed and reflects that his is also primarily a working position. See Town Exhibits C, D and E. Further, he meets every morning with the assistant director of public works, just as the other public works department employees meet every morning with the director. These daily meetings allow the director and assistant director to provide instruction, guidance, and supervision directly to all department employees.

The highway foreman, buildings and grounds supervisor, and wastewater treatment plant operator are working foremen who function the majority of the time as a more experienced and knowledgeable employee, consistent with their position descriptions. While it is true that these three positions have been involved in employee evaluations such involvement has been unstructured, sporadic and relatively insignificant. The director changed the content of one of the few evaluations completed by the highway foreman. Only the wastewater treatment plant operator has some involvement in hiring, as the evidence is this position reviews employment applications and participates in interviews. However, there was insufficient evidence as to the nature and extent of this involvement, including the impact of such involvement in the hiring process. There was insufficient evidence to demonstrate that these three positions are involved in discipline in anything more than a negligible way.

Evidence establishing a greater and more meaningful degree of involvement in the areas of evaluations, discipline, and hiring is required in order for these three disputed positions to qualify as supervisors under RSA 273-A:8, II. Their involvement in such areas is both informal and, on those rare occasions when there is involvement, negligible. As to general supervisory responsibilities, having extensive job responsibility based upon superior knowledge and experience does not automatically equate to having the status of a 273-A:8, II supervisor. This

is true even when the employee's job responsibilities require the employee to use such superior knowledge and experience when, for example, working with a crew, to lead by example and to instruct and oversee less knowledgeable and less experienced employees. Accordingly, I find the evidence is insufficient to establish that the positions of highway foreman, buildings and grounds supervisor, and wastewater treatment plant operator exercise supervisory authority involving the significant exercise of discretion, and accordingly these positions are included in the proposed bargaining unit.

The other issue is whether the department secretary is a confidential position and should be excluded from the proposed unit on that basis. RSA 273-A:1, IX defines a confidential employee as those "[p]ersons whose duties imply a confidential relationship to the public employer." The PELRB has elaborated on the statute, stating confidential employees:

"are those who have access to confidential information *with respect to labor relations*, negotiations, significant personnel decisions and the like. The Board further finds that the number of such employees in any department or other unit of government must be large enough to enable the labor relations activities of the Department and the personnel activities of the Department to be carried on, but must not be so numerous as to deny employees who are entitled to the rights and benefits of RSA 273-A those rights merely on the assertion that they might somehow be connected with activities related to labor relations."

State of New Hampshire, Dept. of Rev. Administration v. State Employees' Ass'n, Decision No. 78001 at 5 (PELRB Jan. 1978)(emphasis in original). See also *State Employees Association of New Hampshire Local 1984 SEIU v. State of New Hampshire*, PELRB Decision No. 2002-045 (April 5, 2002). There "is no set minimum or maximum number of employees who may be deemed confidential." *Appeal of Laconia*, 135 N.H. 421, 424 (1992). In a similar case involving the Town of Newport, the public works department secretary, who was considered to be the administrative assistant to the director of public works, was excluded from

the bargaining unit as a confidential employee. *Appeal of Town of Newport*, 140 N.H. 343 (1995). The department secretary in *Newport* “keeps the personnel records, is privy to any disciplinary actions taken, and attends staff meetings at which confidential matters are discussed.” *Id.* at 347.

A public works department secretary was included in a bargaining unit in *Pembroke*, despite the town’s assertions that the position was confidential. See *I.U.O.E. Local 98 v. Town of Pembroke*, PELRB Decision No. 2006-205. That decision noted that the evidence suggested that the secretary “is in fact not involved in personnel, financial, and other confidential town affairs.” The decision goes on to explain that:

[t]he reason for the DPW Secretary’s lack of involvement in such matters is understandable given the location of the Public Works Department relative to Town Hall. All of the more important and significant financial and personnel information is kept and maintained at Town Hall, which is staffed independently of the Public Works Department. The Town Administrator and Finance Director’s offices are located at the Town Hall.

Mr. Brown did identify a number of tasks he thought the DPW Secretary might be expected to perform, such as typing up disciplinary decisions, letters of reprimand, and employee evaluations, arranging scheduling concerning grievance matters, dealing with time limits, as well as the preparation of responses to grievances. However, the current responsibilities and activities of the DPW Secretary are a better measure of her likely involvement with confidential matters, including labor relations issues, in the event a bargaining unit is formed. These indicate that the DPW Secretary (unlike the department secretary in *Newport*) is not relied upon or involved with personnel or other confidential labor relations matters in any meaningful way.

I find the position of secretary in *Newmarket* is sufficiently similar to the secretary position at issue in *Newport* to require its exclusion from the proposed bargaining unit. In *Newmarket*, the secretary keeps the personnel files and discipline records, which are stored in a locked cabinet. The position opens all department mail, including communications from counsel. The position is involved in budget preparations, including matters such as the elimination of positions. In summary, the public works department secretary has a close

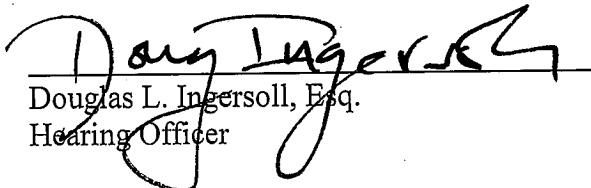
working relationship with the director and is relied upon to assist with administrative matters in a manner that indicates the position will continue to play a role in labor relations in support of management in the event an exclusive representative is duly certified after an election in this case. The duties of this secretary position "imply a confidential relationship to the public employer" and accordingly the position is excluded under RSA 273-A:1, IX (c).

Accordingly, this matter shall proceed to election, and the unit shall consist of the following positions:

Full Time Department of Public Works Employees: Highway Foreman, Buildings and Grounds Supervisor, Wastewater Treatment Plant Operator, Wastewater System Tech, Wastewater Operator I/Facility Mechanic, Drinking Water Operator, Laborer, Truck Drivers/Laborers, Equipment Operators, Mechanic. Excluded: Secretary, Public Works Director, and Assistant Public Works Director.

So ordered.

June 18, 2008.


Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:
Richard Laughton, Business Agent, Teamsters
J. Joseph McKittrick, Esq.