



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME COUNCIL 93,
BELMONT TOWN EMPLOYEES**

and

TOWN OF BELMONT

**Case No.s G-0038-2, 3 & 4
Decision No. 2008-165**

APPEARANCES

Representing: AFSCME Council 93, Belmont Town Employees
Karen Clemens, Esq., AFSCME Council 93, Boston, Massachusetts

Representing: Town of Belmont
Mark Broth, Esq., Devine Millimet, Manchester, New Hampshire

BACKGROUND

On January 2, 2008 AFSCME Council 93, Belmont Town Employees (the "union") filed the above captioned modification petitions to include a buildings and grounds maintenance worker (G-0038-2), a highway truck driver/laborer (G-0038-3), and a police sergeant (G-0038-4) to an existing bargaining unit consisting of the following positions:

All full time patrolmen, patrol corporal, dispatcher, Sr. firefighter/EMTD, firefighter/EMTD, deputy tax collector, assessor's assistant, building inspector/code enforcement officer, firefighter/paramedic, secretary/clerk at the fire department, highway equipment operator/laborer, highway equipment operator/mechanic and working highway foreman, fire department lieutenants. Excluded: accountant, director of public works and highway supervisor, police secretary, and selectman's secretary.

The town filed objections to all three petitions but subsequently withdrew its objections in Case No.s G-0038-2 and 3. In Case No. G-0038-4 the town contends that that: 1) the underlying bargaining unit is defective as its members lack the requisite community of interest; 2) the position of police sergeant lacks a community of interest with positions in the exiting bargaining unit; and 3) the position of police sergeant constitutes a supervisory position under RSA 273-A:8, II and should be excluded on that basis.

This case was originally scheduled for hearing on February 13, 2008. The town's assented to motion to reschedule the original hearing was granted, and a hearing was held on March 28, 2008 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. At the parties' request, the record was held open until April 25, 2008 to allow the parties to file briefs.

Thereafter, the town's subsequent request to extend the deadline to file its brief to May 9, 2009 was granted. Both parties have filed briefs, and the record is closed.

FINDINGS OF FACT

1. The Town of Belmont is a public employer subject to the provisions of RSA 273-A.
2. On July 8, 2004 the PELRB issued an amended certification designating AFSCME as the exclusive representative of a bargaining unit composed of the following employees:

All full time patrolmen, patrol corporal, dispatcher, Sr. firefighter/EMTD, firefighter/EMTD, deputy tax collector, assessor's assistant, building inspector/code enforcement officer, firefighter/paramedic, secretary/clerk at the fire department, highway equipment operator/laborer, highway equipment operator/mechanic and working highway foreman, fire department lieutenants. Excluded: accountant, director of public works and highway supervisor, police secretary, and selectman's secretary.

3. The July 8, 2004 amended certification is the 4th amended certification since the original certification issued in August, 1991.
4. The town police department currently includes 2 corporals and 7 patrol officers.

5. The department has 1 sergeant position currently occupied by Richard Mann.
6. The written job description (Town Exhibit 3) for a sergeant in the town includes the following provisions:

Provides guidance and direction of officers in dealing with such problems as discipline, assignments, progress of investigations and report writing; prepares and counsels employees with regard to performance evaluations.

Prepares patrol and detail schedules for review by the Chief and conducts periodic personnel evaluations.

Investigates citizen complaints against subordinates and may perform Internal Affairs Investigations if required. Participates in disciplinary hearings.

First line supervisor of Union grievances.

Performs other related duties as required.

7. Sergeant Mann has completed evaluations of the corporals and patrol officers. For example, in 2008 he completed evaluations of the 2 corporals, including the preparation of a narrative in the evaluation, and he reviewed the completed evaluation with the corporal, and both signed the evaluation before it was forwarded to the chief. During the evaluation process sergeant Mann decides what rating an employee will receive, including whether the employee will receive an unsatisfactory rating. The chief is the final reviewing authority in the process.

8. Sergeant Mann participates in monthly staff meetings with the chief of police and the lieutenant at which personnel matters such as employee discipline are discussed. Sergeant Mann's input regarding employee discipline has been sought and followed in these meetings.

9. Both the sergeant and the lieutenant conduct internal affairs investigations as directed by the chief. The process includes speaking with all parties involved, preparing fact findings and an opinion, and forwarding the report directly to the chief. An internal affairs investigation can lead to a verbal reprimand as well as termination and indictment.

10. Sergeant Mann has the authority to issue verbal discipline at a scene and can issue written warnings. Such written warnings are included in an employee's personnel file, and are issued independent of the chief. The sergeant position can relieve corporals and patrol officers from duty and can recommend suspension of corporals and patrol officers to the chief.

11. The sergeant position approves vacation requests, although denials of such approvals can be appealed to the chief.

12. Sergeant Mann does not support the inclusion of his position in the proposed bargaining unit as evidenced by his testimony indicating a lack of a self-felt community of interest and potential conflicts he believes would arise on account of his duties and responsibilities.

13. The chief believes that if the sergeant position is included in the existing bargaining unit, ~~the department sergeant will no longer be involved in the completion of performance~~ evaluations, the conduct of internal affairs investigations, the issuance of discipline in the form of written warnings or warnings, or the processing vacation requests.

DECISION

DECISION SUMMARY

The agreed upon modification petitions filed in Case No.s G-0038-2 and 3 are granted. The modification petition in Case No. G-0038-4 is denied because the position of police sergeant in the Town of Belmont is a supervisory position within the meaning of RSA 273-A:8, II.

JURISDICTION

The PELRB has jurisdiction of all petitions to determine and modify bargaining units pursuant to RSA 273-A:8 and Pub 302.05.

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)). 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.

In this small department the nature and extent of sergeant Mann's involvement in the areas of performance evaluation, discipline, and related matters is significant and extensive enough to qualify his position as supervisory within the meaning of RSA 273-A:8, II. For example, Sergeant Mann does not just provide input into a portion of the evaluation process of lower ranking police officers. Instead he is responsible for the completion of the entire evaluation, determination of the rating the employee will receive, including an unsatisfactory rating, followed by a review and sign off with the involved employee before submission to the chief.

Sergeant Mann also has authority to independently issue verbal discipline and written warnings, and any such written warnings are included in an employee's personnel file. He also participates in monthly staff meetings with the chief and lieutenant during which personnel issues are discussed and at which he has made recommendations concerning employee discipline which were subsequently followed. Sergeant Mann also conducts internal affairs investigations, which can include investigations of officers whose positions are in the existing bargaining unit. During this process sergeant Mann is expected to provide a recommendation, which can include the verbal reprimand, termination, or even indictment of an officer.

These facts establish a "propensity to create conflict within the bargaining unit because of the differing duties and relationships" and are in contrast to those present in the *Tilton Police Union* case, a recent PELRB certification proceeding which also involved a contested sergeant's position. In the *Tilton Police Union* case the contested sergeant's position was included in the proposed bargaining unit upon a finding that the evidence was "insufficient to establish that the sergeant's position is vested with the 'supervisory authority involving the significant exercise of discretion.'" In *Tilton Police Union* sergeants did prepare evaluations but were not involved in internal affairs investigations, did not issue discipline beyond oral reprimands, and sergeant Martin of the Tilton Police Department felt it necessary to consult with the captain before proceeding with documented oral reprimands. See PELRB Decision 2007-100.

Viewed in the aggregate, the responsibilities and duties of the sergeant's position in the Belmont Police Department are more extensive and significant than was true in the *Tilton Police Union* case. The Belmont Police Department sergeant exercises "supervisory authority involving the significant exercise of discretion" and therefore "may not belong to the same

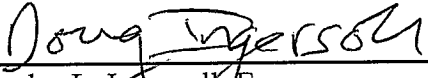
bargaining unit as the employees" he supervises, namely patrol officers and corporals. *See* RSA 273-A:8, II.

Accordingly, modification petitions G-0038-2 and 3 are granted. Modification petition G-0038-4 is denied. An amended certification will issue containing the following description of the bargaining unit:

All full time patrolmen, patrol corporal, dispatcher, Sr. firefighter/EMTD, firefighter/EMTD, deputy tax collector, assessor's assistant, building inspector/code enforcement officer, firefighter/paramedic, secretary/clerk at the fire department, highway equipment operator/laborer, buildings and grounds maintenance worker, highway truck driver/laborer, highway equipment operator/mechanic and working highway foreman, fire department lieutenants. Excluded: accountant, director of public works and highway supervisor, police sergeant, police secretary, and selectman's secretary.

So ordered.

August 21, 2008



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Karen Clemens, Esq.
Mark Broth, Esq.