



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE

and

CASE NO. P-0755-5
DECISION NO. 2008-193

TOWN OF HOOKSETT

APPEARANCES

Representing: Teamsters Local 633 of New Hampshire
Thomas D. Noonan, Business Agent, Manchester, New Hampshire

Representing: Town of Hooksett
James E. Higgins, Esq., Manchester, New Hampshire

BACKGROUND

On July 18, 2008 Teamsters Local 633 of New Hampshire (the "Union") filed the above captioned Modification Petition seeking to add the position of Sergeant to an existing bargaining unit consisting of the following positions per the January 29, 2001 amended certification:

Regular full time Patrol Officers, Detective and Dispatcher. Excluded: Chief of Police, Lieutenants, Sergeants, Secretaries, Dog Officers and Prosecutor. Confidential: Secretary to Chief.

In its petition, the Union requests modification because "an additional layer of Supervisors has been added to [the] Department Captains and Lieutenants – thus, the decrease of supervisory responsibility of the Sergeants."

The Town filed its answer on August 4, 2008 and objects because: 1) Sergeants were previously excluded from the bargaining unit per PELRB Decision No. 1998-040 (May 8, 1998); 2) there has been no change in the duties and responsibilities of Sergeants since 1998 by virtue of the police department's addition of a Captain's position or otherwise; and 3) Sergeants in the Hooksett Police Department still qualify as supervisors within the meaning of RSA 273-A:8, II.

The undersigned hearing officer conducted a hearing on September 3, 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 close of evidence the parties argued their respective positions and the record was closed.

FINDINGS OF FACT

1. ~~The Town of Hooksett is a public employer subject to the provisions of RSA 273-A.~~
2. Teamsters Local 633 of New Hampshire (the "Union") is the certified exclusive representative of the existing bargaining unit which the Union now seeks to modify.
3. The original petition for certification which resulted in a bargaining unit for officers of the Hooksett Police Department was filed in 1990. The request for a bargaining unit consisting of patrol officers was approved, and an election resulted in a November 29, 1990 certification of the Union as the bargaining unit's exclusive representative. The original certification petition expressly excluded Sergeants from the proposed bargaining unit.
4. In 1995 the Union's agreed upon modification petition to add the positions of Detective, Dispatcher, Transcriptionist, and Administrative Assistant was granted, resulting in the issuance of a November 15, 1995 amended certification.
5. PELRB Decision No. 1998-023 denied the Union's request to modify the bargaining unit by adding the position of Sergeant, and included the following finding of fact:

Charles Pelton has been a sergeant since 1991. He does patrol work and answers to the lieutenant. He is a patrol sergeant who supervises a shift, enforces rules and regulations and is responsible for the satisfactory performance of those on his shift. He does performance appraisals of his officers, (Town Exhibit No. 4), and confers with the chief on his shift's performance every two months. Sergeants can give oral reprimands and written recommendations for more severe discipline. The sergeant may relieve an officer not fit for duty and may decide which matters are serious enough to warrant reporting to the lieutenant or chief. (Joint Exhibit No. 1). Sergeants sit on oral boards and participate in the hiring process.

6. PELRB Decision No. 1998-023 also states that:

No reorganization or significant change in duties has been plead that would warrant a modification of the bargaining unit. Rule PUB 302.05. The testimony and evidence presented is not convincing that the composition of this bargaining unit is incorrect. The sergeants and head dispatcher have true supervisory authority which is exercised as they carry out their daily duties. RSA 273-A:8 11. The petition to modify the bargaining unit at the Hooksett Police Department is denied.

7. The Union's appeal of the Decision 1998-023 was denied. *See* PELRB Decision No. 1998-040.

8. A further amended certification issued on January 29, 2001, resulting in the deletion of the positions of Transcriptionist, Administrative Clerk and Receptionist from the bargaining unit.

9. The written job description for a Sergeant in effect in 1998 (Town Exhibit C) is virtually identical to the current written job descriptions for Patrol Sergeant (Town Exhibit D) and Detective Sergeant (Town Exhibit E).

10. Both prior to and subsequent to 1998 Sergeants have been involved to some extent in the areas of hiring, employee discipline, employee evaluations, and general supervision, matters which were relied upon in PELRB Decision No. 1998-023 as the basis for denying the Union's request to add Sergeants to the bargaining unit.

11. A Sergeant's current responsibilities in the areas of employee discipline, employee evaluation, hiring, and general supervisory responsibilities were reviewed in some detail at the hearing by Sergeant Nicholas Small, Lieutenant Leslie McDaniel, and Captain Paul Cecilio, and

there was no relevant and material difference in the testimony of these three witnesses on the subject.

12. Sergeants complete written performance evaluations (Town Exhibit H), issue verbal reprimand and recommend written reprimands (Town Exhibit I), and participate on oral boards in the hiring process.

13. Sergeants' general supervisory responsibilities are reflected in Town Exhibits C, D and F.

14. There have been changes in the department's organization, written policies and standard operating procedures as reflected in a number of the Union Exhibits, but these changes have not altered the responsibility of Sergeants in the areas of employee discipline, employee evaluation, or in the hiring process. The addition of the position of Captain to the department has not altered the responsibilities and duties of Sergeants in the areas of employee discipline, employee evaluation, the hiring process, or in general supervisory matters.

DECISION

DECISION SUMMARY

The Union's modification petition is denied. There is insufficient evidence that the current responsibilities of Sergeants in the areas of employee discipline, employee evaluation, hiring, and general supervision or the applicable legal standards have, since the board considered the Union's previously unsuccessful modification petition, changed to a degree which justifies re-examination of the exclusion of Sergeants from the bargaining unit per PELRB Decision No. 1998-023.

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

Pub 302.05 provides:

(a) Where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed, or where a prior unit recognized under the provisions of RSA 273-A:1 is alleged to be incorrect to the degree of warranting modification in the composition of the bargaining unit, the public employer, or the exclusive representative, or other employee organization if the provisions of section (d) are met, may file a petition for modification of bargaining unit.

The first consideration in this case is whether the Union has satisfied the relevant Pub 302.05 language concerning the Union's obligation as the moving party to demonstrate as a threshold matter either a change in circumstances since the time of the last modification proceedings which resulted in Decision No. 1998-023 or that the existing bargaining unit is incorrect to the degree warranting the current modification request.

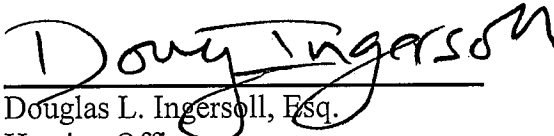
For example, if there have been material changes in the duties and responsibilities of Sergeants in areas relevant to the issue of RSA 273-A:8, II supervisory status, such as discipline, evaluations, hiring and firing, and general supervisory duties, it would be appropriate under Pub 302.05 (a) to decide whether Sergeants should still be excluded. Additionally, such an examination might also be appropriate if there have been material changes in the legal standards applicable to the issue of an employee's RSA 273-A:8, II supervisory status such that the exclusion of Sergeants under current legal standards is arguably no longer correct. An examination of the composition of the bargaining unit on this basis would necessarily require a determination of whether it is proper to apply the changed legal standards to a bargaining unit determined according to the previously existing and applicable legal standards. While the language of Pub 302.05 (a) appears to allow for such a re-examination, it is unnecessary to decide this question in this case.

The evidence submitted into the record in this case is insufficient to establish the requisite legally significant changes in the duties and responsibilities of Sergeants in the Hooksett Police Department over the last 10 years. Further, the Union has not demonstrated, and in fact there have not been, changes in the legal standards applicable to the question of the Sergeant's RSA 273-A:8, II supervisory status since the issuance of Decision No. 1998-023. It should be noted that the purpose of these threshold requirements is to avoid efforts by public employers and employee organizations to re-litigate issues based upon factual circumstances and law which have already been heard and decided by the board. The mere passage of time, approximately 10 years in this case, is not enough to warrant re-examination of the exclusion of Sergeants from the Hooksett Police Department bargaining unit.

The Union's modification petition is dismissed.

So ordered.

September 25, 2008



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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