



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NORTHFIELD POLICE UNION,
NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION**

and

**CASE NO. P-0803
DECISION NO. 2009-030**

TOWN OF NORTHFIELD

APPEARANCES

Representing: Northfield Police Union, New England Police Benevolent Association
Kevin Buck, Esq., Nolan Perroni Harrington, LLP, Lowell, Massachusetts

Representing: Town of Northfield
Matthew H. Upton, Esq., Upton & Hatfield, Concord, New Hampshire

BACKGROUND

On June 25, 2008 the Northfield Police Union, New England Police Benevolent Association ("NEPBA") filed the above captioned Written Majority Authorization-Petition for Certification. The NEPBA seeks to represent a bargaining unit consisting of the following positions:

Sergeants (2), Full Time Patrol Officers (6), Part-Time Patrol Officers (2), Detective (1), Administrative Assistant (1), Part-time Secretary (1). Excluded: Chief of Police.

The PELRB issued a Notice of Filing on June 25, 2008 and the Town filed the required list of employees on June 25, 2008 and filed its Answer on July 3, 2008. The Town's objections are: 1) lack of 10 employees with the same community of interest; 2) some of the part-time patrol officers are irregular or on call employees per RSA 273-A:1, IX (d) and should be excluded from the proposed bargaining unit; 3) the Sergeant position is a supervisory position within the meaning of RSA 273-A:8, II and should be excluded from the proposed bargaining unit; and 4) the Administrative Assistant positions is confidential position and should be excluded from the proposed bargaining unit per RSA 273-A:1, IX (c).

On July 8, 2008 the PELRB issued a Notice Re: Written Majority Authorization Petition stating that the petition was supported by a majority of employees in the proposed bargaining unit but a hearing was required on the Town's objections before a final determination on the question of majority support could be determined.

A hearing scheduled for September 10, 2008 was continued as the result of an Assented to Motion to Continue, as was a subsequent hearing scheduled for October 7, 2008. The undersigned hearing officer conducted a hearing on November 19, 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. The record was held open until December 5, 2008 to allow the parties to file post hearing briefs. Both parties have filed briefs, and the record is closed.

FINDINGS OF FACT

1. The Town of Northfield is a public employer subject to the provisions of RSA 273-A.

2. The NEPBA is an employee organization that is seeking to be certified as the exclusive representative of a bargaining unit through written majority authorization pursuant to RSA 273-A:10.

3. The Northfield Police Department currently includes the positions of full and part-time Patrol Officer, Detective, Sergeant, Administrative Assistant, Office Assistant (vacant), and Chief of Police. The proposed bargaining unit contains 12 employees.

4. Chief Adams has been with the department since 1992, and has previously held the positions of Patrol Officer, Sergeant, and Lieutenant.

5. Sergeant Dow has been with the Northfield Police Department since 1997, and has held the position of Sergeant since 2001.

6. Prior to October, 2008 the Department included the position of Corporal. However, the Corporal position was eliminated in October, 2008 following Corporal Raffaelly's promotion to Sergeant. Chief Adams had planned a change to 2 Sergeants instead of 1 Sergeant and 1 Corporal in order to have another front line supervisor prior to the filing of this petition, but the change was not implemented until after this petition was filed.

7. Richard Arell and Geoffrey Ziminsky are the department's two part-time officers. There are no regular or reserved part-time shifts in the department. Scheduling is done in 3 month blocks, and open shifts are offered to the part-time officers who are free to decline shifts and frequently have declined shifts. In general, shift coverage needs are met in this manner by the part-time officers and also by full-time officers who extend their regular shifts.

8. Officer Arell serves as a bike patrol officer on some Saturdays during the summer. He is not formally scheduled to work a bike patrol shift but instead is allowed to

appear and conduct bike patrol as his personal schedule permits. He also works patrol shifts during other times of the year and is a member of the Special Operations Unit.

9. Officer Ziminsky fills open shifts when he is able and has not worked since September 17, 2008.

10. Sally Roberts is the department's full time Administrative Assistant and is a 20 year employee. Her duties include the preparation of all correspondence, the filing of personnel evaluations, the preparation of any written reprimands, and the maintenance of department personnel records. She assists in the budget preparation process, including helping in the preparation of budget recommendations. Chief Adams copies her on all emails to the Selectmen and the Town Administrator. Her duties are outlined in Town Exhibit 8.

11. The Northfield Police Department written job description for Sergeant includes the following:

SUPERVISION EXERCISED

Exercises general supervision over an assigned shift of uniformed officers. Provides training, instruction and guidance to assigned personnel and reviews and evaluates work being performed. Evaluates and recommends selection, performance and discipline of assigned personnel.

12. Sergeants complete written evaluations of Patrol Officers. Chief Adams reviews the evaluations with the authority to add comments and he has made changes. He relies upon the Sergeants to discuss the evaluations with the Patrol Officers. Ultimately the selectmen rely upon the evaluations to determine pay increases.

13. Sergeants issue oral reprimands, and Sergeants determine whether and for how long such reprimands should be documented in the involved employee's file. Chief Adams also follows the Sergeant's recommendation as to when written reprimands are the correct course of

action. In the past, a department Sergeant provided in substance a recommendation for the termination of a probationary employee, which ultimately led to termination of the involved officer's employment.

14. In the past, almost all department officers were consulted during the hiring process. However, under a new hiring policy, such involvement has ended, and the hiring process is essentially limited to department heads (Chief Adams), the Town Administrator, and the Board of Selectmen.

DECISION

DECISION SUMMARY

The position of Administrative Assistant is excluded as a confidential position from the bargaining unit. The part-time Patrol Officer positions are also excluded as these positions qualify as irregular or on call positions under RSA 273-A:1, IX (d). As a result, there are less than the requisite 10 employees, and the petition is dismissed.

JURISDICTION

The PELRB has jurisdiction of all petitions to determine bargaining units and certify the exclusive representative of an approved bargaining unit through the process of written majority pursuant to RSA 273-A:8, 273-A:10, IX, and Pub 301.05.

DISCUSSION

The Town seeks the exclusion of the Administrative Assistant, claiming this is a confidential position. Confidential employees are "[p]ersons whose duties imply a confidential relationship to the public employer." RSA 273-A:1, IX (c). *See State of New Hampshire, Dept. of Rev. Administration v. State Employees' Ass'n*, PELRB Decision No. 78001 (confidential employees are those who have access to confidential information *with respect to labor relations*,

negotiations, significant personnel decisions and the like); *Appeal of Town of Newport*, 140 N.H. 343 (1995)(department secretary who keeps the personnel records, is privy to any disciplinary actions taken, and attends staff meetings at which confidential matters are discussed excluded); *I.U.O.E. Local 98 v. Town of Pembroke*, PELRB Decision No. 2006-205 (public works department secretary who is in fact not involved in personnel, financial, and other confidential town affairs included.)

In this case, the Administrative Assistant's responsibility for the filing of personnel evaluations, the preparation of any written reprimands, the maintenance of department personnel records, and the provision of assistance in the budget preparation process demonstrates involvement in labor relations matters to a degree that implies a "confidential relationship to the public employer." Accordingly, the position is excluded from the proposed bargaining unit on that basis.

The Town also objects to the inclusion of the two part-time Patrol Officer positions. RSA 273-A:1, IX defines a "Public Employee" as "any person employed by a public employer except....(d) Persons in a probationary or temporary status, or employed seasonally, irregularly, or on call. The court has applied dictionary definitions for the terms "irregular" and "on call," stating that "[i]rregular is defined as 'lacking continuity or regularity of occurrence, activity, or function and [o]n call means ready to respond to a summons or command. *In re Town of Stratham*, 144 N.H. 429, 431 (1999). In *Stratham* the part-time officers:

Historically worked on a regular basis of at least one day a week and covered any overtime and vacant shifts. The number of full-time officers increased over the years, however, and by the time of the union's petition for a bargaining unit, all shifts were assigned to full-time officers. Any vacant shifts and overtime are now offered first to the full-time officers and then to the part-time officers.

Although the part-time officers work substantial hours and indeed may be essential to the functioning of the police department, the fact remains they work only when a shift opens because a full-time officer is unavailable and no other full-time officer chooses to work it.

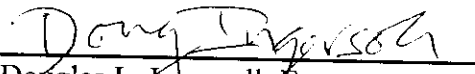
The court found these part-time officers were "on-call employees who work on an irregular basis" who should be excluded from the bargaining unit. *Id.*

As was true with the disputed positions in the *Stratham* case, there are no shifts specifically reserved or designated in Northfield for part-time officers. Additionally, the part-time officers may decline to work when requested and frequently do decline to work. In effect, these patrol officers are not the primary officers for any regular shift, and their schedule is sporadic and unpredictable since whether they work depends upon whether shifts are open and their availability to fill those shifts. Under these facts, Officers Arell and Ziminsky qualify as irregular employees within the meaning of RSA 273-A:1, IX (d) and are excluded from the proposed bargaining on that basis.

The proposed bargaining unit contains less than the requisite 10 employees required under RSA 273-A:8, I because of the exclusion of these 3 employees. Accordingly, the petition is dismissed.

So ordered.

February 5, 2009


Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Kevin Buck, Esq.
Matthew Upton, Esq.