



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**STATE EMPLOYEES ASSOCIATION
OF NEW HAMPSHIRE, INC., SEIU, LOCAL 1984**

and

**CASE NO. G-0066-1
DECISION NO. 2009-098**

TOWN OF MEREDITH

APPEARANCES

Representing: State Employees Association of New Hampshire, Inc., SEIU, Local 1984
Glenn R. Milner, Esq., Molan Milner & Krupski, PLLC
Concord, New Hampshire

Representing: Town of Meredith
Mark T. Broth, Esq., Devine, Millimet & Branch, P.A.
Manchester, New Hampshire

BACKGROUND

On September 23, 2008 the State Employees Association of New Hampshire, Inc., SEIU, Local 1984 ("SEA") filed the above captioned Written Majority Authorization-Petition for Certification and seeks to represent a bargaining unit consisting of the following positions¹:

Public Works Assistant Director (1), Public Works Operations Manager (1), Public Works Administrative Assistant (1), Public Works Office Clerk (1), Buildings & Grounds Crew Chief (1), Laborer (1), Mechanic Crew Chief (1), Mechanic (1), Drainage Crew Chief (1), Heavy Equipment Operator (2), Maintenance II (4), Maintenance III (1), Maintenance IV (2), Solid Waste Coordinator (1), Solid Waste Attendant (4), Cemetery

¹ At the time of hearing the SEA confirmed that the positions of Public Works Director, GIS Operator, Finance Director, and Water and Sewer Superintendent are excluded from the proposed unit by agreement.

Laborer (1), Cemetery Sexton (1), Water & Sewer Operations Manager (1), Water & Sewer Operator (3), Water & Sewer Office Clerk (1).

The Town filed the required list of employees on September 26, 2008 and after receiving an extension of time filed its Answer on October 29, 2008, although due to problems with agency electronic communications the answer was not received until November 7, 2008. A hearing was scheduled for November 7, 2008 at which time the parties appeared and requested a continuance, and a hearing was subsequently scheduled for December 3, 2008.

The Town objects to the proposed unit, claiming that employees in the Public Works Department and the Water and Sewer Department lack the requisite community of interest under RSA 273-A:8, I and Pub 302.02. The Town also objects to the inclusion of the Public Works Assistant Director, claiming the position is supervisory within the meaning of RSA 273-A:8, II and should be excluded on that basis. The Town does not object to two separate bargaining units with a minimum of ten employees in each unit, consisting of a Public Works Department bargaining unit and a Water and Sewer Department bargaining unit. However, there are not enough Water and Sewer Department employees to establish a separate bargaining unit of at least ten employees, and the Town does not agree to a bargaining unit with less than ten employees.

The undersigned hearing officer conducted a hearing on December 3, 2008 at the PELRB offices in Concord at which time 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 December 23, 2008 to allow the filing of post-hearing briefs. The SEA filed its brief according to this schedule, but the Town requested and obtained an extension of time to file its brief late, and did so on December 31, 2008. Given the additional time provided to the Town, the SEA was given the opportunity to file a reply brief on or before

January 16, 2009. This opportunity to file a reply brief was provided to address any concern the SEA may have had about the Town's possible review of the SEA's brief before the Town finalized and filed its own brief. On January 16, 2009 the SEA filed a reply brief and also sought to add additional evidence to the record, consisting of written statements from certain Town employees. The Town objected to the addition of this additional evidence, and in PELRB Decision No. 2009-077 the SEA's request to reopen the record was denied. Glenn R. Milner, Esq. appeared as counsel for the SEA on May 6, 2009. Previously the SEA was represented by Jeffrey L. Brown, an SEA Field Representative and Negotiator.

FINDINGS OF FACT

1. The Town of Meredith is a public employer subject to the provisions of RSA 273-A.
2. The SEA is an employee organization seeking to be certified as the exclusive representative of a bargaining unit through written majority authorization pursuant to the provisions of RSA 273-A:10.
3. The proposed bargaining unit contains twenty five Public Works Department ("PWD") employees and five Water and Sewer Department ("WSD") employees. There are no existing bargaining units in the Town.
4. The PWD consists of four divisions: Buildings and Grounds, Cemetery, Highway, and Solid Waste. The Highway and Solid Waste divisions are located next to each other on Jenness Hill Road off Route 3, approximately one mile to the north of town hall. The Buildings and Grounds and Cemetery divisions are also located next to each other, approximately one-half mile south of the Highway and Solid Waste divisions, just off of Route 3, also north of town hall.

5. The WSD is located approximately three quarters of a mile south of town hall, on Waukegan Street, off Route 3. This location is approximately one and one-half miles south of the Building and Grounds and Cemetery divisions and nearly two miles south of the Highway and Solid Waste divisions. The WSD is adjacent to Lake Waukegan, the Town's water supply. Approximately forty five percent of the Town's residents are serviced by this water supply, with the water supply undergoing treatment at the filtration plant, and wastewater transported by a series of pumping stations to a regional treatment plant in Franklin.

6. The PWD and WSD are separate departments. Each department has its own department head, a Director of Public Works, currently Michael Faller, and a Superintendent of Water and Sewer, currently Brian Carroll. Neither Mr. Faller nor Mr. Carroll has authority to supervise and administer other Town departments. Both work under the direction of the Town Manager and the Board of Selectmen.

7. In early 2008 the merger of the PWD and WSD was considered by the Town Manager. The merger was not implemented, and it is unclear whether the Board of Selectmen ever reviewed the merger proposal.

8. The PWD and WSD have separate budgets, but the WSD is "self funding," with its operating costs paid out its "enterprise" fund. The PWD is not self funding.

9. Employees of the PWD and the WSD are currently subject to the same Personnel Policy Manual, Union Ex. 1, and the pay schedule reflected in the Town's Classification and Pay Plan, Union Ex. 2, applies to all Town employees, including employees of the PWD and the WSD.

10. The work of WSD employees, including the Water & Sewer Operations Manager, three Water & Sewer Operators, and a Water & Sewer Office Clerk relate to the local sewer

collection system, consisting of approximately seventeen miles of sewer mains and five pumping stations as well as the operation of the filtration plant, which produces approximately 600,000 gallons per day of treated water during the summer peak season. Most PWD and WSD employees work Monday to Friday, 7:00 a.m. to 3:00 p.m., with different schedules applicable, for example, to employees in the PWD Solid Waste Division with responsibility for the Town transfer and recycling stations. Water and Sewer Operations Manager Robert Hill estimates that WSD employees are in "the field" doing maintenance up to four to five hours a day.

11. State licensing requirements for WSD employees include an operations license and a distribution license. At least four WSD employees have such licenses, including WSD Superintendent Brian Carroll, WSD Operations Manager Robert Hill, and WSD Operators Lee Bavis and Nicholas Schwarz.

12. In general, PWD Highway Division employees and WSD employees may work together as frequently as twice a week or as infrequently as once per month. Mike Faller, the PWD Director, testified that during the summer of 2008 WSD and PWD employees worked together fifteen to twenty times, for two to three hours and over two to three days at a time. Mr. Faller also testified that weeks have gone by without employees in these two departments working together.

13. On some of the occasions that WSD and PWD Highway Division employees work "side by side" they are attending to more significant WSD projects or repairs, such as work on a broken water main. In such situations PWD Highway Division employees usually take responsibility for necessary excavation so that the WSD can access and resolve the break in the water main. During such work, it is not uncommon for a WSD employee to supervise the entire

crew, and likewise for a PWD employee to supervise the entire crew, depending upon who is on the job site.

14. The frequency of water main breaks requiring excavation and repair is reflected in Town Ex. 3, which documents water main breaks on an annual basis dating back to 1986. Water main breaks have occurred since 2000 as follows:

Year	Number Water Main Breaks
2000	1
2001	5
2002	2
2003	No data
2004	2
2005	2
2006	1
2007	3
2008	2

15. A history of all WSD work requiring excavation since 1986 is set forth contained in Town Ex. 4. This history reflects that since 2000 the WSD has completed 57 excavations, 19 of which involved water main work and presumably the participation of the PWD Highway Division employees based upon other evidence submitted into the record.

16. Divers from WSD and PWD have also worked together as necessary.

17. PWD Highway Division employees and WSD employees coordinate during paving projects to the extent WSD infrastructure, such as water lines and sewer manholes, are involved. In such cases the PWD Highway Division employees have responsibility for paving and WSD has responsibility for the installation of water lines and raised sewer manhole covers. Coordination and cooperation among the two departments on such projects is necessary in order to avoid inefficiencies and waste that would occur if the WSD and PWD worked independently.

18. The PWD and WSD also coordinate layouts of storm drains and catch basins before proceeding to do work that is responsibility of each department in these areas. WSD has also provided its sewer cleaner to PWD to assist in the removal of rock and dirt debris from catch basins and WSD employees have helped PWD employees unplug culverts. These activities are part of routine maintenance.

19. Employees from Buildings and Grounds, a division of the PWD, usually mow and clear the cross country water and sewer mains even though this task is formally the responsibility of the WSD.

20. On occasion, the PWD and the WSD have "shared" employees due to an employee shortage arising from illness or other short staffing that might develop within one of the departments. This appears to be a relatively infrequent occurrence.

21. PWD employees may work overtime on projects that are included within the WSD budget, and the Water and Sewer Superintendent is responsible for approving such overtime if it will be charged to the WSD.

22. Because of the various geographic locations of the WSD and PWD divisions employees do not take normally take breaks together.

23. Because the WSD and the PWD are two different departments within the Town, discipline is administered separately by each department. Additionally, the approval of sick leave, vacation, or other absences from work is done within each department.

24. On a recent capital improvement infrastructure project involving five streets using outside contractors PWD and WSD representatives attended a staff meeting every two weeks and also performed joint inspections of the outside contractor work.

25. The job description for the Public Works Assistant Director provides as follows:

JOB SUMMARY

Performs highly responsible administrative and technical work in assisting the Public Works Director with project, employee, and fiscal management of the Public Works Department. Participates in the management, planning, and execution of Solid Waste, (sic) operations.

SUPERVISION RECEIVED

Work is performed with considerable independence under the general administrative direction of the Public Works Director and is reviewed through conferences, reports, and program results.

SUPERVISION EXERCISED

Provides direct supervision to Public Works and Solid Waste personnel. Responsible for employee evaluation and discipline. Assigns work to highway crew.

26. As reflected on Town Exhibit 1, Allan Bolduc, the current Public Works Assistant Director, has completed performance evaluations of numerous employees, primarily if not exclusively employees of the Highway Division, since at least 2004. He most recently completed one or two employee evaluations in the May-June, 2008 time period when he was serving as the acting Public Works Director in Mr. Faller's absence. These evaluations were ultimately approved and signed by the Town Manager.

27. By February 2008 Director Faller and the Town Manager reached an understanding that Mr. Bolduc lacked any formal training in the process of employee evaluation, and that his evaluations were not always appropriate. As a result, Mr. Bolduc's involvement in the employee evaluation process has been curtailed, but no changes have been made to his formal job description.

28. Employee evaluations completed by Mr. Bolduc have been used to help determine whether the involved employee will receive a pay increase.

29. The written job summary for Public Works Assistant Director does not specify the kind of discipline that Mr. Bolduc can administer. In practice he issues verbal reprimands and

may recommend to the Director that an employee receive a written letter of discipline. Mr. Bolduc may also issue a written letter of discipline when serving as the acting Director in Mr. Faller's absence.

30. The Public Works Assistant Director has no authority to hire or fire, but like other PWD employees may serve on a hiring panel.

DECISION

DECISION SUMMARY

There is a sufficient community of interest between WSD and PWD employees to support their placement in the same bargaining unit. The position of Public Works Assistant Director is excluded as supervisory under RSA 273-A:8, II. The petition is granted as to the approved bargaining unit as there is a sufficient written majority authorization by employees in the approved bargaining unit.

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 authorization pursuant to RSA 273-A:8, 273-A:10, IX and Pub 301.05.

DISCUSSION

A principal consideration in determining an appropriate bargaining unit is whether there exists a community of interest "in working conditions such that it is reasonable for the employees to negotiate jointly." *Appeal of the University System of New Hampshire*, 120 N.H. 853, 856 (1980)(citations omitted). The statutory and rules criteria used to assess community of interest are set forth in RSA 273-A:8, I and Pub 302.02, and provide as follows:

RSA 273-A:8, I. The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under

RSA 273-A:10. In making its determination the board should take into consideration the principle of community of interest. The community of interest may be exhibited by one or more of the following criteria, although it is not limited to such:

- (a) Employees with the same conditions of employment;
- (b) Employees with a history of workable and acceptable collective negotiations;
- (c) Employees in the same historic craft or profession;
- (d) Employees functioning within the same organizational unit.

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.

Among other things, the Town argues there is no community of interest in this case because WSD and PWD employees work in different departments, under different department heads, with separate budgets, different work locations, and have different job responsibilities. At the same time the Town acknowledges that "other communities have chosen to place the water and sewer functions within their public works department. In such circumstances, a unit consisting of employees from the same operating department would be appropriate." See Town Post-Hearing Brief. However, whether employees work within the same operating department or "organizational unit" is just one factor to consider in community of interest analysis, and it is not necessarily dispositive of the question. There may be other facts which demonstrate the requisite community of interest among the employees in the proposed bargaining unit, notwithstanding the fact that their employer has organized them into two different departments, and which demonstrate that it is reasonable for the involved employees "to negotiate jointly."

Broadly speaking, employees of the Town's PWD and WSD are engaged in skilled and unskilled labor, and have responsibility for maintaining different parts of the Town's infrastructure and the delivery of certain essential services like water, sewage disposal, trash disposal, passable public roads, building and ground maintenance, and cemetery burials and maintenance. To some extent these different activities are related, and it is not difficult to understand why some municipalities group employees performing work in these areas within the same organizational unit.

In Meredith, the WSD and the PWD are not so large, nor do they function so independently of each other, that employees of the two departments have nothing in common. The evidence in this case reflects that sometimes employees of the WSD and the PWD Highway Division share the same work environment and conditions, are subject to the same supervision, and work cooperatively to complete work that to some degree is the responsibility of both departments. There are other examples of joint activity discussed in the Findings of Fact, such as work on capital improvement projects and inspection of work performed by outside contractors.

To a certain extent both WSD and PWD Highway Division employees are responsible for the operation of equipment and machinery. WSD employees use such equipment for excavation and cleaning and maintenance of water and sewer pipes. PWD Highway Division employees also use such equipment for excavation, and also to maintain catch basins and culverts, and presumably for other purposes, such as general road maintenance and construction. Common work rules and personnel practices are also subjects to consider when evaluating community of interest, and in this case employees in the proposed bargaining unit, like all Town employees, are currently subject to the same personnel policy and the same classification and pay plan, although

this evidence is given less weight because it is not unique to WSD and PWD employees. There was little explicit evidence presented on a self-felt community of interest, but the absence of compelling or even modest evidence concerning a self-felt community of interest is not fatal to a request for the approval of a proposed bargaining unit.

It is true that there are differences between the job responsibilities of WSD employees and PWD employees and the physical location of the WSD facilities relative to the PWD facilities. For example, some WSD employees have licenses and/or certifications and are responsible for the operation of the Town's water filtration plant. They are also responsible for maintenance of the water and sewer infrastructure, with some of that work reflected in Town Exhibit 4. However, there are similar differences within the PWD, as evidenced by the different locations of the Highway and Solid Waste Divisions relative to the Buildings and Grounds and Cemetery Divisions, and by the differences in the kind of work performed by employees in the different divisions.

AFSCME Council 93, Local 863, Rochester Public Works and City of Rochester, PFLRB Decision No. 2008-035 is a recent modification case involving the Rochester Department of Public Works and a bargaining unit comprised of relatively diverse positions similar to those under consideration in this case. In that case the public employer raised community of interest objections to the proposed modification which sought to add buildings and grounds employees to a bargaining unit comprised of all permanent, full-time employees of the Public Works Department, including highway department employees, water and sewer construction crews, water plant employees, and sewer plant employees:

The City also contends that AFSCME has not satisfied the community of interest requirement, mainly because buildings and grounds employees have different job responsibilities and work in different locations as compared to the PWD employees currently covered by the existing bargaining unit. However, the City overlooks the fact

that there is already a noticeable diversity in terms of job responsibilities and work locations among existing bargaining unit employees. This existing diversity undermines the City's argument that buildings and grounds employees cannot have a community of interest with other bargaining unit members on account of their specific job responsibilities and work locations. The distinctions and differences between buildings and grounds employees and existing bargaining unit employees are no more significant than the distinctions and differences that exist as between the current bargaining unit members.

The current bargaining unit is populated by employees who work for the highway department, the sewer plant, the water plant, and or are on the water and sewer construction crews. Their relatively diverse job responsibilities and places of work are illustrated by the job descriptions submitted into evidence. Despite these differences, this group of employees has functioned as a bargaining unit under RSA 273-A since 1983, and the City does not contend today that it is an inappropriate unit. With regard to the employees at issue in this case, a community of interest showing does not require the level of uniformity in job duties, places of work and other areas urged by the City. Additionally, there are a number of documents which either on their own or in conjunction with witness testimony show that that as of 2007, at least on an operational basis, the City considers the buildings and grounds division to be a division of the PWD, and they are subject to common rules and procedures. For example, see Union Exhibits 1, 2, 3, 4, 5, 6, 7, 11, and 14.

See PELRB Decision No. 2008-035.

The Rochester decision generally supports a community of interest finding in the proposed Town of Meredith bargaining unit under consideration in this case. As was true in Rochester, there is currently a diversity among PWD employees, reflected in the fact that they are organized into four different divisions, have different responsibilities, and some have different physical locations. Including WSD employees in the same bargaining unit as these PWD employees would not fundamentally alter the nature of the diversity that already exists among PWD employees. Further, the evidence in the record shows that WSD employees do not always work in isolation from PWD employees, particularly employees of the Highway Division, as there are a number of situations in which employees of the two departments interact and work together to accomplish objectives. These employees sometimes work cooperatively performing related work, and operate similar equipment. There is a familiarity among the

employees based upon this common work effort and, at times, similar working environments and conditions, even though organizationally the employees are in different departments. The record in this case is sufficient to establish a community of interest within the meaning of RSA 273-A:8, I and Pub 302.02 and to justify the placement of WSD employees in the same bargaining unit as PWD employees.

The Town also objects to the inclusion of the Assistant Director of Public Works in the bargaining unit, contending the position qualifies as supervisory within the meaning of RSA 273-A:8, II. This statute 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).

The position of Public Works Assistant Director currently has the authority to conduct employee evaluations and to issue discipline. Mr. Bolduc has conducted a number of employee evaluations during the time period dating back to 2004 which have been considered in determining employee pay status. Despite a joint decision by the Public Works Director and Town Manager that as of February, 2008 Mr. Bolduc should not conduct further employee evaluations, the relevant position description was not changed. This suggests that the concerns are based more on Mr. Bolduc's skills and training than on the appropriateness of having the

position of Public Works Assistant Director conduct employee evaluations. According to the applicable job description, the position has "considerable independence" with responsibility for employee management, evaluation, and discipline. The position is also responsible for the assignment of work to the highway crew.

Under the applicable criteria the position of Public Works Assistant Director qualifies as a person who exercises "supervisory authority involving the significant exercise of discretion." The conclusion that the Public Works Assistant Director position is supervisory within the meaning of the statute can be contrasted with a similar dispute over the supervisory status of highway foreman, buildings and grounds supervisor, and wastewater treatment plant operator positions at issue in another case involving a public works department, *Teamsters Local 633 of NIE/Newmarket Public v. Town of Newmarket*, PFLRB Decision No. 2008-127. In that case, the evidence demonstrated that the disputed positions engaged in extensive work alongside other department employees, and had minimal or no involvement in employee discipline or evaluations. In *Newmarket* the positions of Public Works Director and Assistant Public Works Director were not analyzed, as they were excluded from the proposed bargaining unit by agreement.

The petition is granted based upon the following appropriate bargaining unit:


Unit: Town of Meredith Water and Sewer Department and Public Works Department employees in the following positions: Public Works Operations Manager (1), Public Works Administrative Assistant (1), Public Works Office Clerk (1), Buildings & Grounds Crew Chief (1), Laborer (1), Mechanic Crew Chief (1), Mechanic (1), Drainage Crew Chief (1), Heavy Equipment Operator (2), Maintenance II (4), Maintenance III (1), Maintenance IV (2), Solid Waste Coordinator (1), Solid Waste Attendant (4), Cemetery Laborer (1), Cemetery Sexton (1), Water & Sewer Operations Manager (1), Water & Sewer Operator (3), Water & Sewer Office Clerk (1).

Exclusions: Public Works Director, Public Works Assistant Director, GIS Operator, Finance Director, and Water and Sewer Superintendent.

The petition is supported by enough authorization cards to establish that a majority of the employees in the approved bargaining unit have selected the petitioner to serve as their exclusive bargaining representative under RSA 273-A.

So ordered.

May 21, 2009



Douglas L. Ingersoll, Esq.
Hearing Officer

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