



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, IUPA, AFL-CIO

and

Town of Hillsborough

Case No. G-0134-1

Decision No. 2010-112

Appearances:

Diane Byrnes, Esq., Chelmsford, MA, for New England Police Benevolent Association, IUPA, AFL-CIO

Michael Donovan, Esq., Concord, NH, for the Town of Hillsborough

Background:

New England Police Benevolent Association, IUPA, AFL-CIO filed a written majority authorization (WMA) petition for certification on February 3, 2010 seeking to represent certain employees of the Town of Hillsborough Police Department (Town). The Town objects to the inclusion of the Sergeants and the Dispatch Supervisor in the bargaining unit on the ground that these employees have supervisory responsibilities within the meaning of RSA 273-A:8, II and should not be included in the same bargaining unit as the employees they supervise.

The undersigned hearing officer conducted a hearing on April 5, 2010 at the Public Employee Labor Relations Board (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 parties' stipulations are incorporated in the Findings of Fact below. The parties filed post-hearing briefs and the record is closed.

Findings of Fact

1. The Town of Hillsborough is a public employer within the meaning of RSA 273-A:1, IX.
2. The Town's Executive Branch is comprised of a three member Board of Selectmen.
3. The New England Police Benevolent Association (Union) is an employee organization seeking to be certified as the exclusive representative of a bargaining unit consisting of certain employees of the Hillsborough Police Department through written majority authorization pursuant to RSA 273-A:10, IX.
4. The Hillsborough Police Department has the following positions:

Chief of Police, one Captain (currently vacant), one Lieutenant, two Patrol Sergeants, eight Patrol Officers, including a Prosecutor/Officer, two part time Police Officers, one part time Animal Control Officer, one Dispatch Supervisor, four full-time Dispatchers, four part time Dispatchers, and one Administrative Secretary.
5. At the time of the hearing, two Patrol Officers were probationary employees.
6. The proposed bargaining unit currently consists of the following employees: four full time Dispatchers, four part time Dispatchers, one Dispatch Supervisor, two full time Patrol Sergeants, and six full time Patrol Officers.
7. Patrol Sergeants work 5:00 PM to 3:00 AM. Their work week consists of four 10-hour days.
8. During the day the Police Chief and the Lieutenant supervise the Patrol Officers.
9. After 5:00 PM, the Patrol Sergeants are the highest ranking officers in the Department and are in charge of the Patrol Officers.
10. Ian Donovan and Brian Reopel are Patrol Sergeants. Brian Reopel was promoted to the position of Patrol Sergeant in October of 2009.

11. Section "Supervision Received" of the Patrol Sergeant's Job Description provides in relevant part:

Works under the general supervision of the Police Chief and Captain and exercises independent judgment initiative and understanding in interpreting orders, rules, regulations, and laws and in meeting emergency situations.

12. Section "Supervision Exercised" of the Patrol Sergeant's Job Description provides:

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.

13. The examples of duties in the Patrol Sergeant's Job Description include the following:

Ensures proper performance of members of assigned shift and assigns patrol personnel. Assists in the supervision of the work of the department and performs shift supervision as assigned. Serves as immediate superior of all assigned personnel. Reports any breach of department regulations to superior.

14. Section "Supervision Received" of the Patrol Officer's Job Description provides in relevant part:

Works under the general supervision of the Police Chief, Captain, Lieutenant, or Sergeant who make general assignment as to the area to be covered, specific cases to be investigated, etc.

15. Patrol Sergeants have authority to direct manpower, and to discipline, counsel, and train Patrol Officers without consulting a senior officer. During the night shift, the Patrol Sergeants fill open positions and make decisions on overtime assignments. They also make decisions on the use of canine units and on ride along requests.

16. Patrol Sergeants have authority to give verbal and written warnings. The written warnings are placed in the Officers' personnel files.

17. Patrol Sergeants determine whether an Officer is fit for duty. If an Officer is not fit for duty, they can send the Officer home without prior consultation with a senior officer.

18. Patrol Sergeants evaluate Patrol Officers. They fill out evaluation forms, review the evaluations with the Officers, and place evaluations in personnel files. The evaluations are not directly tied to pay increases. The evaluations are considered in making promotional decisions and in choosing Field Training Officers. Two Patrol Sergeants evaluate all Patrol Officers as all Patrol Officers rotate through the night shift.

19. When the use of force results in death or injury during the night shift, the Patrol Sergeants have authority to take a weapon from the Officer involved in the incident.

20. Patrol Sergeants participate in internal affairs investigations. The Chief makes ultimate disciplinary decision on internal affairs investigations. The Officer one level below the Chief, currently the Lieutenant, reviews investigation material and makes recommendations to the Chief. The Officers one level below the recommending Officer, currently the Patrol Sergeants, conduct fact finding in internal affairs investigations.

21. Patrol Sergeants assist in the hiring process. They conduct physical agility test and sit on oral boards along with Lieutenants, Dispatch Supervisor and members from outside the Police Department. There is at least one Patrol Sergeant on the hiring board.

22. If the position of Sergeant is vacant, the promotion takes place within the Department. A supervisor's, including Sergeant's, review counts for 45% of the overall promotion process. The Patrol Sergeants, along with other supervisors, rate persons applying for an open Sergeant position. Other criteria used to fill the position include oral board, a written test, and a physical agility test.

23. Kevin Belanger is the Dispatch Supervisor.

24. Section "Job Summary" of the Dispatch Supervisor's Job Description provides:

Performs highly responsible and specialized supervisory and administrative work in the coordination and control of all dispatchers, equipment and functions of the emergency dispatch center.

25. Section "Supervision Received" of the Dispatch Supervisor's Job Description provides:

Works under the general supervision of the Police Chief, who assigns areas of responsibility, outlines general policy, and reviews work in terms of the effectiveness of dispatch center operations. Performs duties independently, devising new procedures as may be necessary; confers with supervisor on proposed programs or major operations changes.

26. Section "Supervision Exercised" of the Dispatch Supervisor's Job Description provides:

Provides direct supervision and training to Dispatchers. Assigns work; outlines policies and procedures; and is responsible for the selection, evaluation and discipline of employees.

27. Examples of duties outlined in the Dispatch Supervisor's Job Description include the following:

Directs all dispatching and clerical operations of center. Trains, schedules, assigns and reviews work of dispatchers; interpret policies and provides technical guidance and assistance as necessary Coordinates the center's response to disaster or emergency situations of a complex and critical nature through direct supervision of center activities; . . . prepares and submits payroll; keeps track of employees' leave time and overtime . . . ; submits dispatch budget; approves and submits department bills; maintains financial expenditure account.

28. Dispatch Center has a separate budget. The Dispatch Supervisor prepares the budget. He also signs time cards and payroll and approves payments and schedules.

29. Dispatch Supervisor does not consult with the Chief before setting schedules, approving leave requests, or assigning overtime.

30. Dispatch Supervisor has authority to discipline the Dispatchers and to issue verbal and written warnings without prior consultation with the Chief.

31. Dispatch Supervisor has authority to recommend suspension but an internal affairs investigation must be conducted in connection with such recommendation.

32. Dispatch Supervisor conducts the Dispatchers' performance evaluations.

33. Dispatch Supervisor participates in the hiring process. He takes resumes, participates in oral board interviews and testing, and makes recommendations.

Decision and Order

Decision Summary

The Patrol Sergeants and the Dispatch Supervisor are excluded from the bargaining unit because they are persons exercising supervisory authority involving the significant exercise of discretion and, therefore, may not belong to the same bargaining unit as the employees they supervise. The number of authorization cards is insufficient to establish a written majority authorization and the Union's request to be certified based upon the authorization cards is denied. However, the Union may proceed to an election by filing a written request for election in accordance with the requirements of Pub 301.05 (I).

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

The Town argues that the Sergeants and the Dispatch Supervisor are supervisory employees and, therefore, should be excluded from the bargaining unit proposed by the Union. RSA 273-A:8, II provides that the "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." In determining whether an employee exercises supervisory authority, important

factors to consider include “the 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). See also *NEPBA, Inc. Local 40/NH Fish & Game Conservation Officers et al. v. SEA/SEIU Local 1984*, PELRB Decision No. 2006-174. “Supervisory employees are separated from the employees they supervise ‘to avoid conflicts between the two groups because of the differing duties and relationships which characterize each group.’” *Appeal of Town of Stratham*, 144 N.H. at 432. See also *New England Police Benevolent Association, Inc., Local 50 et al. v. State of New Hampshire, Department of Safety, DMV*, PELRB Decision No. 2006-169. “[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. 607, 611 (1993). See also *Tilton Police Union, NEPBA Local 29 and Town of Tilton*, PELRB Decision No. 2007-100. 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 *AFSCME Council 93, Local 3657 v. Town of Merrimack*, PELRB Decision No. 2010-010.


In the present case, the evidence is sufficient to prove that the Patrol Sergeants and the Dispatch Supervisor exercise supervisory authority involving the significant exercise of discretion. The Patrol Sergeants are the highest ranking officers during the night shift. They have authority to discipline the Patrol Officers without prior consultation with a senior officer and are responsible for filling open positions during the night shift. The Patrol Sergeants evaluate the Patrol Officers and their evaluations affect the promotional decisions. They also participate in internal affairs investigations and in hiring and promotional processes. In addition, the Patrol Sergeants determine whether a Patrol Officer is fit for duty and have authority to send the Officer

home if they find that he is not fit for duty. Furthermore, the Patrol Sergeants make decisions on overtime assignments without consulting the Chief. Similarly, the Dispatch Supervisor evaluates the Dispatchers and makes recommendations on hiring. The Dispatch Supervisor has authority to issue verbal and written warnings and to recommend suspension. In addition, the Dispatch Supervisor also sets the schedule, assigns overtime, and makes decisions on leave requests. Therefore, the Patrol Sergeants and the Dispatch Supervisor have supervisory authority involving the significant exercise of discretion and are excluded from the bargaining unit pursuant to RSA 273-A:8, II.

The approved bargaining unit shall consist of the following positions: Patrol Officers, Full Time Dispatchers, and Part Time Dispatchers. Because of the exclusion of the Patrol Sergeants and the Dispatch Supervisor, the undersigned hearing officer conducted a further examination of the authorization cards pursuant to Pub 301.05 (k) and determined that the number of the authorization cards is insufficient to establish a written majority authorization. Accordingly, the Union's request to be certified as the exclusive representative of the approved bargaining unit is denied. The Union may proceed to an election by filing a written request for election, on a form provided by the PELRB, within 10 calendar days of the date of this decision. See Pub 301.05 (l).

So ordered.

June 7, 2010


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Diane S. Byrnes, Esq.

Michael L. Donovan, Esq.