



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hooksett Police Supervisors, NEPBA Local 38

and

Town of Hooksett

Case No. G-0145-1

Decision No. 2010-182

Appearances:

Kevin E. Buck, Esq., Nolan Perroni Harrington, LLP, Lowell, Massachusetts for the Hooksett Police Supervisors, NEPBA Local 38

James E. Higgins, Esq., James E. Higgins PLLC, Manchester, New Hampshire for the Town of Hooksett

Background:

The Hooksett Police Supervisors, New England Police Benevolent Association, Local 38 (Association) filed a written majority authorization (WMA) petition for certification on June 23, 2010 proposing a bargaining unit consisting of the following positions within the Hooksett Police Department: Captain, Lieutenant, Sergeant, Dispatch Supervisor, Secretary Supervisor and Prosecutor. The Town of Hooksett (Town) objects claiming that the proposed bargaining unit does not contain a minimum of ten employees as required under RSA 273-A:8, I, includes employees exercising supervisory authority involving significant exercise of discretion contrary to RSA 273-A:8, II, includes confidential and probationary employees contrary to RSA 273-A:1, IX (c) and (d), combines professional and non-professional employees contrary to RSA 273-A:8, II, and lacks a community of interest as required under RSA 273-A:8, I.

The undersigned hearing officer conducted a hearing on August 6, 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 timely filed post-hearing briefs; and the record is closed.

Findings of Fact

1. The Town of Hooksett is a public employer within the meaning of RSA 273-A:1, IX. The Town manages and supervises the Hooksett Police Department through the Hooksett Police Commission.

2. The Hooksett Police Supervisors, NEPBA Local 38 is an employee organization seeking to be certified as the exclusive representative of a bargaining unit consisting of certain employees of the Hooksett Police Department through written majority authorization pursuant to RSA 273-A:10, IX.

3. The proposed bargaining unit consists of the following positions: Captain, Lieutenant, Sergeant, Dispatch Supervisor, Secretary Supervisor, and Prosecutor. These positions are presently filled by the following employees: Jon Daigle (Support Services Captain), Paul Cecilio (Operation Captain), Kimberly Chabot (Prosecutor), Leslie McDaniel (Lieutenant/Professional Development Administrator), Troy Cline (Patrol Lieutenant), Kristofer Dupuis (Detective Sergeant), Cynthia Fowler (Dispatch Supervisor), Francine Swafford (Executive Assistant)¹, Gary Blanchette, Michael Labrecque, and Justin Crotty (Patrol Sergeants).

4. At the time the petition was filed, the proposed bargaining unit contained 12 employees.

¹ This position is designated as "Secretary Supervisor" in the Association's petition. On the list of employees provided by the employer pursuant to Pub 301.05 (j) (2) this position is designated as "Executive Assistant". For the purpose of clarity, the designation "Executive Assistant" is used hereinafter.

5. The Police Officers, Detectives, and Dispatchers of the Hooksett Police Department are members of the certified bargaining unit represented by the Teamsters' Local 633.

6. Stephen Agrafiotis has been the Chief of Police in the Hooksett Police Department since November of 1999. Chief Agrafiotis is a member of the Police Department negotiating team that is involved in collective bargaining with Teamsters' Local 633.

7. Hooksett Police Department Standard Operating Procedures provide that the Chief directly oversees the Executive Assistant, and the Command Staff which consists of Support Service Administrator (Captain), Operation Supervisor (Captain), Professional Development/Administrator (Lieutenant), and the Prosecuting Attorney. See Town Exhibit Town B, pages 2 & 3.

8. Francine Swafford is the Executive Assistant to the Chief of Police. The Executive Assistant's office is located next to the Chief's office. As the Chief's Executive Assistant, Ms. Swafford has access to and maintains the personnel files. She prepares correspondence, maintains performance evaluations by filing updates, takes and types the minutes of the Police Commission's public and non-public meetings, types the Chief's letters, including budgetary and labor related letters, and receives invoices from the legal counsel. Ms. Swafford is privy to the Chief's ideas regarding collective bargaining negotiations involving the Teamsters' Local 633 bargaining unit.

9. The discipline disposition forms are placed in personnel files. The personnel files are kept in a locked cabinet in the Executive Assistant's office. She has the key to the cabinet and decides whether to give the key to the cabinet to the person requesting it. If a person requests an access to a personnel file without providing a valid reason, the Executive Assistant refuses to provide the key and reports the occurrence to the supervisor or the Chief. After allowing an

employee an access to a personnel file, the Executive Assistant observes the employee while he or she uses the file to ensure that nothing is removed from the file without permission.

10. The Executive Assistant's Job Description provides that her duties and responsibilities include the following:

- a) Provide for the efficient operation and coordination of the Office of the Chief of Police.
- b) Prepare and maintain:
 - 1) All files belonging to the Chief.
 - 2) Maintain a calendar for all appointments, meetings, conferences, and etc., for the Chief.
 - 3) A current record of the names, addresses and telephone numbers of all employees, including add/change roster in computer.
- c) Prepare and type correspondence as requested by the Chief. . . .
- e) Maintain security of sensitive files. . . .
- h) Prepare and compile monthly reports.
- i) Take minutes at Police Commission meetings. . . .

Town Exhibit L, page 1.

11. The Hooksett Police Department performance evaluation process includes the following steps:

- . . . d) Once the performance evaluation is completed, it will be reviewed with the Section Supervisor who will then sign off that he/she did review the performance evaluation.
- e) The member's current supervisor will then review the performance evaluation with the employee. . . . The employee can take this opportunity to write his/her comments in the space provided on the evaluation. The employee must then sign the form.
- f) The performance evaluation form will be turned into the Section commander who will then submit it in a sealed envelope to the Training Coordinator prior to the due date.
- g) The Training Coordinator will then mark the envelope as received and submit the performance evaluation to the Chief of Police for his/her review.
- h) If acceptable, the Chief of Police will sign the evaluation recommending appropriate action be taken. If not acceptable, The Chief of Police will make the necessary comments in the space provided. The employee will then be allowed to review the performance evaluation with the Chief of Police or his/her designee. Comments from the employee will again be encouraged and added to the form. The Chief of Police will then sign the evaluation.

Town Exhibit O, page 3.

12. Performance evaluations are conducted at least once a year. The performance evaluations of the newly hired and newly promoted employees are conducted every 3 month for the first year until the employee is released from probation.

13. The Department utilizes oral boards as part of the hiring process. A hiring oral board usually consists of 2 civilians from outside the Department, a Captain, and a Prosecutor. The oral board is convened after the physical agility test. Oral board grades the standardized test taken by the candidates and makes recommendations to the Chief. After reviewing the scores assigned by an oral board, the Chief makes recommendations to the Police Commission. The Commission then makes hiring decisions.

14. The Department utilizes oral boards as part of the promotional process. A promotional oral board consists of 2 civilians from outside the Department, a Captain, a Lieutenant, and a Prosecutor. The scores assigned by a promotional oral board go to the Chief who makes recommendation to the Police Commission. The Commission has the final authority to approve promotions.

15. Jon Daigle and Paul Cecilio are both Captains in the Hooksett Police Department.

16. The Captains rank second after the Chief of Police in the Hooksett Police Department chain of command structure.

17. Captain Daigle is the Support Services Administrator.

18. The Hooksett Police Department Standard Operating Procedures provide in part that “[t]he Support Services Administrator answers directly to the Chief of Police and provides continuation of command and/or supervision during the absence of the Chief.” The Support Service functions include recruitment, selection, and career development (promotions and testing). See Town Exhibit B, page 4.

19. The Support Service Administrator’s Job Description provides in relevant part: “Subject to the direction from the Chief, the Support Service Administrator has direct control over the Department’s Communication Division. He is responsible for the direction and control of civilian personnel under his/her command to assure the proper performance of duties and

adherence to establish [sic] rules, regulations, policies, and procedures.” Town Exhibit H, page

1.

20. The Support Service Administrator’s Job Description includes the following duties and responsibilities:

Maintain discipline and morale within the Communication Division. . . .
Investigate personnel complaint as assigned by the Chief of Police. . . .
Organize and assign duties when directed by the chief of Police, to assure proper performance of personnel at department functions. . . . Periodically inspect personnel under his/her direct control to assure proper attire and appearance. . . . Prepare efficiency ratings on all personnel under his/her direct control as directed by established procedures. . . . Supervise the training of all personnel under his/her direct control. Assist in training of other departmental personnel when directed by the Chief of Police. . . . Be responsible for the scheduling of all communication personnel and approval of any requests for leave. . . . Administer recruitment and selection process for the entire department. . . .

See Town Exhibit H, pages 1 & 2.

21. The Dispatch Supervisor reports directly to the Support Service Administrator. See Town Exhibit B, page 5. As Support Service Administrator, Captain Daigle evaluates the Dispatch Supervisor. He approves her requests for leave, assesses her fitness for duty, and has the authority to send the Dispatch Supervisor home if he finds her unfit for duty, to issue a verbal warning, and to order a remedial training. Captain Daigle also has the authority to recommend written warnings, promotion, suspension, and/or termination.

22. The performance evaluations of Dispatchers prepared by the Dispatch Supervisor are submitted to Captain Daigle for review, changes, if any, and recommendations. He has authority to override Dispatch Supervisor’s reviews and recommendations. Captain Daigle meets with the evaluated employees to discuss the evaluations. Thereafter, the evaluations go to the Chief for review and final approval.

23. Captain Daigle is involved in hiring for the whole Police Department, not only for the Administrative Support Services, and participates in hiring and promotional oral boards. Captain Daigle participated in hiring of the Dispatch Supervisor.

24. Captain Cecilio is the Operation Supervisor.

25. The Hooksett Police Manual, Standard Operating Procedures provides in part that “[t]he Operation Supervisor answers directly to the Chief of Police and provides for continuation of command and/or supervision during the absence of the Chief and Support Service Administrator.” The Detective Lieutenant and the Patrol Lieutenant report directly to the Operation Supervisor. See Town Exhibit B, pages 5 & 6.

26. The Operation Supervisor’s Job Description provides in relevant part:

Subject to the direction from the Chief of Police, the Operations Supervisor has direct command over all Investigative and Patrol Functions. He/she is responsible for the direction and control of all personnel assigned to both sections under his/her command to assure that there is sufficient communication and cooperation between both sections. He/she will also be responsible for the proper performance of duties and adherence to established rules, regulations, policies and procedures by all members assigned to his/her command.

Town Exhibit N, page 1.

27. The General Duties and Responsibilities of Operation Supervisor include the following:

a) Have direct supervision of both the Patrol and Investigative Lieutenant positions. Utilizing both of these positions, assure that all Department Operations are conducted in a timely, efficient and professional manner at all times. b) Maintain discipline and morale within both the Investigative and Patrol Divisions. . . . d) Supervise the assigned duties within the Investigative and Patrol divisions to assure the proper cooperation, performance and coordination between the two departmental functions. . . . i) Submit a written report to the Chief of Police regarding any member of the Department when they commit a serious breach of any regulation of the Department, and informal corrective measures prove inadequate. . . . j) Investigate personnel complaints as assigned by the Chief. . . . m) It will be the responsibility of the Operations Supervisor to assure the timely preparing [sic] of all performance evaluations on members under his/her command as directed by Department police, AOM P-260. . . . o) At the

direction of the chief of Police, monitor the progress of probationary patrol officers, and prior to the expiration of their probationary period, submit to the Chief of Police a detailed written report concerning their qualifications to secure permanent status and his/her opinion as to the desirability of their retention. p) Assist in the Administration of the Department as directed by the Chief of Police. . . .

Town Exhibit N, pages 1-3.

28. The position of Detective Lieutenant is currently vacant and unfunded. Some of the duties of the Detective Lieutenant are presently performed by the Detective Sergeant Kristofer Dupuis.

29. As Operation Supervisor, Captain Cecilio evaluates Detective Sergeant Dupuis and Lieutenant Cline. Captain Cecilio has authority to issue verbal warnings and order a remedial training. Captain Cecilio has the authority to assess an employee's fitness for duty, to relieve an employee from duty if found unfit, and to send him or her home with pay. Captain Cecilio participates in promotional oral boards. Captain Cecilio has authority to recommend suspension, promotion, demotion, and/or termination.

30. The performance evaluations of Patrol Sergeants and Detectives prepared by Lieutenant Cline and Detective Sergeant Dupuis, respectively, are submitted to Captain Cecilio for review, changes, if any, and recommendations. He has authority to override Lieutenant Cline's and Sergeant Dupuis' reviews and recommendations. Captain Cecilio meets with the evaluated employees to discuss the evaluations. Thereafter, the evaluations go to the Chief for review and final approval.

31. Captains Daigle and Cecilio decide who will be assigned to hiring oral boards.

32. During the Chief's absence, either Captain Daigle or Captain Cecilio is in charge of the Department.

33. The Chief gives strong weight to the Captains' recommendations regarding hiring, promotion, discipline, and/or termination.

34. The Chief and the Police Commission use performance evaluations while considering promotions.

35. The Chief reviews performance evaluations and oral board test scores before making recommendations regarding hiring, promotions, or termination to the Police Commission. The Police Commission takes performance evaluations into account in deciding whether to approve a cost of living adjustment.

Decision and Order

Decision Summary

The Executive Assistant is a confidential employee within the meaning of RSA 273-A:1, IX (c) and is, therefore, excluded from the bargaining unit. The Captains are supervisory employees within the meaning of RSA 273-A:8, II and are, therefore, excluded from the bargaining unit. Because of the exclusion of the Executive Secretary and the Captains, the bargaining unit fails to satisfy a ten-employee minimum requirement under RSA 273-A:8, I. Accordingly, the petition for certification is denied.

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 seeks to exclude the position of Executive Assistant claiming that this position is confidential. RSA 273-A:1, IX (c) excludes confidential employees from the definition of a "public employee." Confidential employees are "[p]ersons whose duties imply a confidential relationship to the public employer." RSA 273-A:1, IX (c). The PELRB has previously defined "confidential employees" as those employees who have "access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like." *State of New*

Hampshire, Dept. of Rev. Administration v. State Employees' Ass'n, PELRB Decision No. 78001. See also *Teamsters Local 633 of NH/Newmarket Public Works Employees and Town of Newmarket*, PELRB Decision No. 2008-127. In a case involving the Town of Pembroke, the public works secretary was included in the bargaining unit over the Town's objection that she was a confidential employee. See *I.U.O.E. Local 08 v. Town of Pembroke*, Decision No. 2006-205. In *Pembroke*, the secretary's office was located in a Public Works department while the significant financial and personnel information was kept at the Town Hall which was independently staffed. In addition, the evidence in *Pembroke* was insufficient to prove that the secretary was involved with personnel or other confidential labor relations matter in any meaningful way. *Id.* In contrast, in a case involving the Town of Northfield Police Department, the police department's administrative assistant whose duties included the preparation of all correspondence and written reprimands, the maintenance of personnel records, filing of personnel evaluations, and assisting in the budget preparation process was excluded from the bargaining unit. See *Northfield Police Union, New England Police Benevolent Association and Town of Northfield*, Decision No. 2009-030. See also *Rochester Municipal Employees Association v. City of Rochester*, Decision No. 2009-150 (executive secretary to city manager excluded from bargaining unit).

In the present case, the evidence proves that the Executive Assistant is a confidential employee within the meaning of RSA 273-A:1, IX (c). Unlike the secretary in *Pembroke*, the Executive Assistant's office is located next to the Chief's office. Similarly to the administrative assistant in *Northfield*, she maintains all personnel files and performance evaluations; takes and types the minutes of the Police Commission's meetings, both public and non-public; and types the Chief's letters, including budgetary and labor related letters. In addition, according to the Chief Agrafiotis' uncontroverted testimony, the Executive Assistant is privy to the Chief's ideas regarding collective bargaining negotiations with the exclusive representative of an existing

bargaining unit. Accordingly, the position of Executive Assistant is a confidential position and is excluded from the bargaining unit.

The Town also seeks to exclude the position of Captain claiming that the Captains are supervisory employees within the meaning of RSA 271-A:8, II and, therefore, should not be included in the same unit with the employees they supervise. 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; *Teamsters Local/Plaistow Town Employees v. Town of Plaistow*, PELRB Decision No. 2010-062. “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; *New England Police Benevolent Association, IUPA, AFL-CIO v. Town of Hillsborough*; PELRB Decision No. 2010-112. In a case involving the Town of Tilton Police Department, the position of sergeant was included in the bargaining unit along with patrol officers over the public employer’s objection that sergeants were supervisory employees. See *Tilton Police Union, NEPBA Local 29 v. Town of Tilton*, PELRB Decision No. 2007-100. Although the sergeants in *Tilton* had authority to issue verbal warnings and conduct evaluations, the evaluations were not utilized in deciding whether to approve the salary increases, promotions, demotions, or terminations. *Id.* In addition, the sergeants did not have authority to recommend suspension, promotion, demotion, or termination.

Id. In contrast, in *Gilford Professional Firefighters, IAFF Local 3517 v. Gilford Fire-Rescue Board of Fire Engineers*, PELRB Decision No. 2004-089, the fire captain and lieutenants were excluded from the proposed firefighters bargaining unit. In *Gilford*, the captain and lieutenants evaluated the performance of firefighters and the evaluations were a significant factor in determining the merit increases; in the absence of the fire chief or deputy chief, the captains and lieutenants were in charge of the fire station; and their disciplinary authority, “while not overwhelming,” involved “overseeing the conduct and performance of firefighters and offering informal counseling/training when appropriate, assessing firefighters’ fitness for duty, and serving as a conduit for communicating disciplinary or performance issues to the Fire Chief.” *Id.*

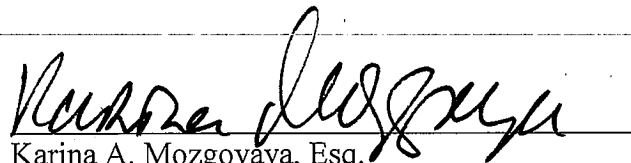
In the present case, the evidence proves that the Captains exercise supervisory authority involving the significant exercise of discretion. Captain Daigle evaluates the Dispatch Supervisor. Captain Cecilio evaluates the Patrol Lieutenant and Detective Sergeant. Unlike the sergeants’ evaluations in *Tilton*, the performance evaluations prepared by the Captains are used by the Chief and the Police Commission while considering promotions and deciding whether an employee will receive cost of living adjustments. In contrast to the sergeants in *Tilton*, the Captains in this case have authority to recommend hiring, promotion, suspension, and termination and the Chief gives strong weight to the Captains’ recommendations. Similar to the captain and lieutenants in *Gilford*, both Captains have the authority to issue verbal warnings, order remedial training, and are in charge of the department in the absence of the Chief. In addition, Captain Daigle is involved in hiring process for the whole Police Department and participates in hiring and promotional oral boards; and Captain Cecilio participates in the promotional oral boards. For the foregoing reasons, the inclusion of the Captains in the same unit with the employees they supervise will likely create conflict within the bargaining unit. Accordingly, the position of Captain is a supervisory position within the meaning of RSA 271-A:8, II and is excluded from the bargaining unit.

After the exclusion of the positions of Executive Assistant and Captain, the proposed bargaining unit contains fewer than 10 employees. RSA 273-A:8, I provides that “[a] public employer may recognize a bargaining unit with 3-10 members, but in no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest without the prior approval of the governing body of the public employer.”

In the present case, there is no evidence of the prior approval of the bargaining unit with fewer than 10 employees by the governing body of the public employer. Accordingly, the Association’s petition is denied. Since the Association’s petition is denied pursuant to RSA 273-A:1, IX (c) and RSA 273-A:8, I and II, it is unnecessary to address the other objections raised by the Town.

So ordered.

October 11, 2010


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

Distribution:
Kevin E. Buck, Esq.
James E. Higgins, Esq.