



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Teamsters Local Union 633 of New Hampshire**

**and**

**Rockingham County**

**Case No. G-0162-1**  
**Decision No. 2011-203**

**Appearances:**

Kevin P. Foley, Business Agent, for Teamsters Local Union 633 of New Hampshire

Thomas J. Flygare, Esq., Jackson Lewis LLP, Portsmouth, New Hampshire for the Rockingham County

**Background:**

The Teamsters Local Union 633 of New Hampshire (Union) filed a written majority authorization (WMA) petition on April 11, 2011 seeking certification as an exclusive representative of the proposed bargaining unit consisting of the following positions within the Rockingham County: Major (Sheriff's Department), Captain (Sheriff's Department), Lieutenant (Sheriff's Department), Communication Supervisor (Sheriff's Department), Sergeant (Sheriff's Department), Sergeant (Department of Corrections), Corporal (Department of Corrections, Education Coordinator (Department of Corrections), Mental Health Counselor (Department of Corrections), and Substance Abuse Counselor (Department of Corrections).<sup>1</sup> The County objects to the petition claiming, among other things, that the proposed bargaining unit lacks a

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<sup>1</sup> The original petition was filed on February 8, 2011 and contained a proposed bargaining unit of certain employees within the Sheriff's Department only. The Union amended its petition on April 11, 2011. See PELRB Decision No. 2011-104.

community of interest required under RSA 273-A:8, I and contains supervisory and confidential employees in violation of RSA 273-A:8, II and RSA 273-A:1, IX (c) respectively.

The undersigned hearing officer conducted a hearing on May 23, 2011 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 filed post-hearing briefs and the decision is as follows.

### **Findings of Fact**

1. The County is a public employer within the meaning of RSA 273-A:1, IX. County is governed by three Commissioners and a County Delegation consisting of more than 90 delegates.

2. The Union is an employee organization seeking to be certified as an exclusive representative of a bargaining unit consisting of certain employees of the County Sheriff's Department and the County Department of Corrections (Corrections or Corrections Department) through written majority authorization pursuant to RSA 273-A:10, IX.

3. The proposed bargaining unit contains 16 Corrections employees in the following positions: Sergeant (5 employees), Corporal (8, including 2 probationary employees), Education Coordinator (1), Mental Health Counselor (1), and Substance Abuse Counselor (1). Presently, there is one vacant Sergeant position in the Corrections Department as the employee who used to fill this position is on military leave.

4. The proposed bargaining unit contains the following Sheriff's Department positions: Major, Captain, Lieutenant, Sergeant, and Communications Supervisor.

5. Apart from the "community of interest" objection to the inclusion of the Corrections employees in the same bargaining unit with the Sheriff's Department employees, the County does not object to the inclusion of Corrections Corporals, Education Coordinator, Mental Health Counselor, and Substance Abuse Counselor in the proposed bargaining unit.

6. Michael Downing is the High Sheriff of the County, an elected official, and the head of the Sheriff's Department. The High Sheriff has the authority to hire, fire, promote, and discipline employees of the Sheriff's Department without the County Commissioners' approval.

7. Stephen Church is the Superintendent of the Department of Corrections. The Superintendent reports to the County Commissioners, who oversee general operations of the Corrections Department and have authority over its budget. For employees of the Department of Corrections, the final decision-making authority with respect to hiring, firing, promotion, and discipline lies with the County Commission and not with the Corrections Superintendent.

8. The Sheriff's Department and the Corrections are located in the same building. The Sheriff's Office occupies the top floor of the building and the Corrections Department occupies the rest of the building. Sheriff's Department employees have limited access to the Corrections Department: they can enter a booking room but cannot go to the control center or cell blocks. The Sheriff's Department armory, evidence room, and dispatch center are secure areas which Corrections employees cannot enter without escort.

9. Duties and responsibilities of the Sheriff's Department employees include enforcing the law, transporting prisoners from jail to the court and back, providing dispatch services for 24 communities, conducting criminal investigations and traffic enforcement, processing civil documentation and extraditions, and providing court security. Part of their work day is spent inside the building and part is spent on the road. With the exception of communication supervisors, Sheriff's Department employees are armed while on duty and utilize tazers, weapons, and cruisers, which they take home, as part of their assigned equipment. They routinely interact with the general public.

10. Duties and responsibilities of Corrections employees are restricted to custody and control of inmates, while duties and responsibilities of Sheriff's Department employees involve law enforcement like any police department. Corrections employees work mostly inside the

building, have no cruisers, and do not work outside detail. Corrections employees are not armed when on duty but carry a pepper spray and handcuffs. They rarely interact with the general public. Corrections employees transport female prisoners to Strafford County and inmates to medical facilities.

11. Corrections employees are on the County pay grade schedule. Sheriff's Department has a different pay grade schedule. For example, a Sheriff's Department Sergeant is at a higher pay grade than a Corrections Sergeant.

12. Sheriff's Department employees rarely interact with the Corrections Department employees. They do occasionally communicate over the telephone. Corrections Sergeants and Corporals occasionally come in contact with Sheriff's Department employees, for example, during riots, when Sheriff's Department employees help Corrections employees to subdue unruly prisoners. Nevertheless, in case of a scuffle with inmates, the Corrections employees do not call the Sheriff's Department supervisors to subdue inmates.

13. All Corrections Sergeants and Corporals are paid hourly rate, overtime, and shift differential, report to work to the same place, get the same health insurance, are in the same craft or profession, and are subject to the same work rules and standard operating procedures (SOP).

14. The Sheriff's Department and the Corrections Department have separate and different SOPs. Department of Corrections work rules do not apply to the Sheriff's Department employees. The Corrections employees operate under a voluminous set of SOPs specific to the Corrections Department.

15. Corrections Corporals report to Sergeants; Sergeants report to Corrections Security Lieutenant and Operations Lieutenant; Lieutenants report to the Major; and the Major reports to the Superintendent. The Superintendent reports to three County Commissioners. See County Exhibit 6.

16. According to the Corrections Sergeant's Job Description, a Sergeant ensures that all rules, regulations, policies and procedures are followed; books and releases inmates; assumes responsibility for field training new staff; makes daily rounds of facility; teaches CPR/First Aid; interacts with inmate population; adjusts schedule to cover for absent personnel; maintains and reviews inmate and court records; collaborates with other police agencies and facilities, courts, and programs to verify records and ensure timely and safe movement of prisoners; investigates and responds to staff and inmate incidents and reviews daily emergency situation reports; oversees booking processes including the processing of monies received; assumes responsibilities for the safety and security of the public entering the facility and performs other related duties. See County Exhibit 6.

17. Supervisory Responsibility section of the Corrections Sergeant's Job Description provides:

Manages 3 subordinate supervisors who supervise a total of 20 employees in the Corrections Department. Is responsible for the overall direction, coordination, and evaluation of this unit. Carries out supervisory responsibilities in accordance with the organization's policies and applicable law. Responsibilities include training employees; planning, assigning, and directing work; appraising performance; addressing complaints and resolving problems.

See County Exhibit 6.

18. Corrections Sergeants train Corporals and line Officers and assign duties to Corporals. Corrections Lieutenants, not Sergeants, set up Corporals' schedules. Sergeants can make shift changes without prior approval by a superior officer. Corrections Sergeants have authority to issue verbal warnings to Corporals. They can recommend written warnings but do not have authority to issue them.

19. Corrections Sergeants evaluate Corporals using established forms and procedures. Sergeants fill out evaluations forms and send them up the chain of command, which includes Lieutenants, the Major, and the Superintendent, each of whom reviews and can override

Sergeants' evaluations. Sergeants have authority to make recommendations on evaluations. An evaluation must be approved by the Superintendent. The Superintendent gives weight to Sergeants' evaluations but sometimes changes or overrides the evaluations prepared by Sergeants. If and when an evaluation is approved by the Superintendent, a Sergeant meets with an evaluatee to discuss the evaluation. The evaluations can have an impact on compensation.

20. Sergeants evaluate complaints made by the subordinate staff and inmates to determine whether they can be resolved informally and can resolve minor complaints on their own.

21. The County Commissions' approval is necessary to terminate a Corrections employee. The Superintendent has no authority to terminate.

22. Corrections Sergeants have no authority to hire or fire employees. Sergeants do not recommend termination of a Corporal but they can recommend a suspension. In a case of serious misconduct by an employee, Sergeants report it up the chain of command. Sergeants can recommend a removal of a Corporal from the facility but this recommendation must be approved by a senior officer.

### **Decision and Order**

#### **Decision Summary**

The Sheriff's Department employees are excluded from the proposed bargaining unit as they lack a community of interest with the Corrections employees. The Corrections Sergeants are included in the proposed bargaining unit as the evidence is insufficient to prove that they are supervisory employees within the meaning of RSA 273-A:8, II. The Union's petition for certification is granted for the approved bargaining unit consisting of the following Corrections positions: Sergeant, Corporal, Education Coordinator, Mental Health Counselor, and Substance Abuse Counselor.

## 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

RSA 273-A:8, I vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof. "The 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 Town of Newport*, 140 N.H. 343, 352 (1995) (quoting *Appeal of the University System of New Hampshire*, 120 N.H. 853, 855 (1980)). The County claims, among other things, that the Sheriff's Department employees lack a community of interest with the Corrections Department employees. RSA 273-A:8, I provides that

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.

The PELRB rules provide additional criteria for determining whether a community of interest exists:

- (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.

Pub 302.02 (b). "[T]he statutory framework which guides PELRB decisions is flexible, and gives much discretion to the PELRB's expertise. The statute and regulation require only that certain

factors *may* be considered in determining whether a community of interest exists.” *Appeal of University System of New Hampshire*, 131 N.H. 368, 374 (1988) (emphasis in original). Under the statute and regulations, “the PELRB need not find each criterion satisfied in order to find that a community of interest exists.” *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995).

In the present case, the evidence is insufficient to prove that the Corrections Department employees share a community of interest with the Sheriff’s Department employees. Although both departments are located in the same building, their employees are not functioning within the same organizational unit, do not share a history of collective negotiations, and are not in the same craft or profession. Further, the evidence is insufficient to establish that the conditions of employment are the sufficiently similar in two departments or that there exist a self-felt community of interest between the Corrections employees and the Sheriff’s Department employees. Moreover, two departments follow different work rules and operating procedures and have different salary structure. Accordingly, the Sheriff’s Department positions are excluded from the proposed bargaining unit.

The employees of the Corrections Department share a community of interest as they function within the same organizational unit, have the same conditions of employment, are covered by the same personnel rules, policies, and procedures, and interact with each other on regular basis.

The County also seeks to exclude the position of Corrections Sergeant from the bargaining unit claiming that they are supervisory employees within the meaning of RSA 271-A:8, II and, therefore, should not be included in the same unit with the Corporals. 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.” Importantly, the mere exercise of supervisory authority alone is not enough to exclude a position from a bargaining unit; only supervisory positions which also involve the *significant* exercise of



discretion are excluded. The Supreme Court recognized that “[d]etermining where in the pyramid of administrative functions an employee becomes part of ‘management’ is not a simple task.” *In re Nashua Association of School Principals*, 119 N.H. 90, 93 (1979). A supervisory relationship exists “when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion.” *International Chemical Workers Union Council and Hillsborough County Nursing Home*, PELRB Decision No. 1999-079.

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. 429, 432 (1999). 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 determining whether an employee exercises supervisory authority involving the significant exercise of discretion, 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. at 432. 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. The fact that an employee has some authority in the areas of discipline, evaluation, and hiring “is the start, and not the end, of the analysis because positions possessing some authority in these areas are not *per se* supervisors within the meaning of the statute.” *Tilton Police Union, NEPBA Local 29 v. Town of Tilton*, PELRB Decision No. 2007-100. A proper assessment of whether a position is supervisory “requires consideration of matters such as the

nature, extent, character and quality of [employee's] authority and involvement in the areas of discipline, evaluations, and hiring." *Id.*

"[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 *Hampstead Police Union, NEPBA Local 37 and Town of Hampstead*, PELRB Decision No. 2008-071. In a case involving the 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 evaluate, the evaluations did not determine whether an employee would receive a salary increase, promotion, demotion, or be terminated. *Id.* In addition, the sergeants had authority to issue verbal warnings but did not have authority to recommend suspension, promotion, demotion, or termination. *Id.* See also *Hampstead Police Union, NEPBA local 37 and Town of Hampstead*, PELRB Decision No. 2008-071 (including sergeant position in same bargaining unit with police officers over employer's objection); *American Federation of State, County and Municipal Employees, Council 93 v. Town of Litchfield, New Hampshire, Police Department*, PELRB Decision No. 90-91 (same); *American Federation of State, County and Municipal Employees, Council #68, AFL-CIO and Town of Hudson, New Hampshire, Police Department*, PELRB Decision No. 81-22 (same). In contrast, in *AFSCME Council 93, Belmont Town Employees and Town of Belmont*, PELRB Decision No. 2008-165, the PELRB denied the union's petition to add a position of police sergeant to a police officers' unit finding, among other things, that the sergeant was a supervisory employee because he had authority to issue verbal discipline and written warnings, evaluated and rated other employees, made recommendations regarding discipline, and conducted internal affairs investigations. *Id.*

In the present case, the extent to which Corrections Sergeants are involved in discipline, evaluation, and the hiring and termination processes, and the nature of their involvement do not rise to the level of the significant exercise of discretion that would warrant exclusion from the bargaining unit. For example, although the Sergeants complete annual evaluation forms for Corporals, the evaluation forms are then moved up the chain of command and each superior officer in that chain, including the Lieutenants, the Major and, finally, the Superintendent, has authority to override the evaluation prepared by the Sergeant. Also, there is insufficient evidence to prove that the evaluations prepared by the Sergeants constitute a significant factor in determining pay increases, promotions, demotions, discipline, or terminations. Only the County Commissioners have authority to hire, demote, promote, or terminate Corrections Department employees. The Sergeants are four steps removed in the chain of command from the ultimate decision makers, the County Commissioners. The evidence is also insufficient to prove that the Sergeants play a significant role in hiring of Corporals. Furthermore, unlike a police sergeant in *Belmont*, Sergeants here do not have authority to issue written warnings, to conduct internal affairs investigations, or to recommend demotion or termination. Similar to the supervisory authority exercised by the sergeants in *Tilton*, the supervisory authority exercised by the Corrections Sergeants is relatively limited and is in nature of an employee performing some supervisory functions in accordance with professional norms, akin to a "working foreman". The degree of supervisory authority exercised by the Corrections Sergeants is not likely to create a conflict within the proposed bargaining unit because of differing duties and relationships.

For the foregoing reasons, the Corrections Sergeants are not supervisory employees within the meaning of RSA 273-A:8, II and are included in the proposed bargaining unit. Apart from the "community of interest" objection to the inclusion of the Corrections employees in the same bargaining unit with the Sheriff's Department employees, the County does not object to the inclusion of Corrections Corporals, Education Coordinator, Mental Health Counselor, and

Substance Abuse Counselor in the proposed bargaining unit. Accordingly, the approved bargaining unit shall consist of the following positions within the County Department of Corrections: Sergeant, Corporal, Education Coordinator, Mental Health Counselor, and Substance Abuse Counselor.

Based upon the authorization cards on file, there is a written majority authorization for the Union to serve as the exclusive representative of the approved bargaining unit. Accordingly, the Union's petition for certification is granted. A Certification of Representative and Order to Negotiate shall issue in accordance with Pub 301.05 (m).

So ordered.

July 27, 2011

  
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Staff Counsel/Hearing Officer

Distribution:  
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