

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association

and

Town of Henniker

Case No. G-0156-2

Decision No. 2011-248

Appearances:

Kevin E. Buck, Esq., Nolan Perroni Harrington, LLP, Lowell, Massachusetts for the New England Police Benevolent Association

Barton L. Mayer, Esq., Upton & Hatfield, LLP, Concord, New Hampshire for the Town of Henniker

Background:

On June 3, 2011 the New England Police Benevolent Association (NEPBA) filed a written majority authorization (WMA) petition seeking certification as an exclusive representative of the proposed bargaining unit consisting of the following positions within the Henniker Police Department: full-time Patrol Officer, Receptionist, Administrative Assistant, Parking Officer, and Crossing Guard. The Town objects to the petition claiming, among other things, that the proposed bargaining unit does not contain a minimum of ten employees with the same community of interest as required under RSA 273-A:8; that Crossing Guards are seasonal, temporary and probationary employees and do not share a community of interest with Police Officers and, therefore, should be excluded from the unit under RSA 273-A:1, IX (d); and that the Administrative Assistant and Secretary/Receptionist are confidential employees and do not

share a community of interest with Police Officers and, therefore, should be excluded from the proposed unit under RSA 273-A:1, IX (c).

The undersigned hearing officer conducted a hearing on August 3, 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 Town is a public employer within the meaning of RSA 273-A:1, IX.
2. The NEPBA is an employee organization seeking to be certified as the exclusive representative of a bargaining unit consisting of certain employees of the Henniker Police Department through written majority authorization.
3. At the time the petition was filed, the proposed bargaining unit contained 11 employees in the following positions: full-time Patrol Officers (6), Administrative Assistant (1), Receptionist/Secretary (1), Parking Officer (1), and Crossing Guards (2).
4. Ryan Murdough has been the Chief of Police in the Town of Henniker for approximately two years. Prior to being promoted to the position of the Chief, he served as a Patrol Officer, Detective, and Detective Sergeant. He has worked for the Town of Henniker Police Department for 16 years.
5. Full-time Patrol Officers work 40 hours a week but are paid for 43 hours. They are expected to work the whole year and have a set schedule. Each full-time Patrol Officer, except for the Patrol Officer/Detective, who is on a Monday through Friday fixed schedule, is assigned to one of the following 5 Shifts:

Shift 1 – Tuesday to Friday, 6:00 AM to 4:00 PM

Shift 2 – Saturday, Sunday, Monday 6:00 AM to 4:00 PM; Tuesday
4:00 PM to 2:00 AM

Shift 3 – Sunday to Thursday, 10:00 PM to 6:00 AM

Shift 4 – Wednesday, Thursday, 4:00 PM to 2:00 AM; Friday,
Saturday, 8:00 PM to 6:00 AM
Shift 5 – Sunday, Monday, 2:00 PM to 12:00 AM; Friday, Saturday,
5:00 PM to 3:00 AM

Each full-time Patrol Officer goes through the following work schedule rotation: 12 weeks on Shift 1, then 12 weeks on Shift 2, and so forth. A full-time Patrol Officer goes back to Shift 1 after completing 12 weeks on Shift 5.

6. A Patrol Officer's duties and responsibilities include the following: patrol an assigned area for general purpose of crime prevention and law enforcement, apprehend persons violating the law or wanted by the police, check public assemblies and gatherings, observe and interrogate suspicious persons, issue traffic citations, conduct investigation of all offenses and incidents in the area of assignment, maintain and inspect a department cruiser, collect evidence, direct the flow of traffic, and enforce parking ordinances and motor vehicle laws. See Town Exhibit 8.

7. Full-time Patrol Officers and administrative staff receive pay increases, paid sick, vacation and holiday leave, health, life, and disability insurance and other benefits. They have assigned desks at the Police Station. Patrol Officers are assigned cruisers and weapons. Police Officers' paychecks are placed in their mail boxes at the Police Station.

8. Patrol Officers and administrative staff are evaluated regularly. They work full year and are expected to continue their employment the following year. Full-time Patrol Officers cannot have a second job without the Chief's approval.

9. The Chief can suspend a Patrol Officer and recommend a termination to the Board Selectmen but does not have authority to terminate a Patrol Officer. Patrol Officers are entitled to a hearing prior to termination.

10. The position of Crossing is within the Police Department's budget. Candidates for the position apply to the Police Department; and the Chief of Police makes a hiring decision.

11. Crossing Guards are hired to work Monday through Friday, two hours a day for a total of 10 hours a week. They actually work around 5 hours a week. Their job is dictated by school hours; and their employment begins on the first school day and ends on the last school day of the year. If the school is closed, they do not work; and they do not work during the summer months. They are given no contract or promise of continued employment.

12. Ten different persons have been employed as Crossing Guards since 2003. Only one of them worked two consecutive full terms. Each year the Police Department posts a new vacancy notice for a Crossing Guard position. The Chief of Police usually asks current Crossing Guards if they are interested in coming back next year. If they are interested, they are not required to reapply.

13. One of the Crossing Guards is stationed on Western Avenue and the other is stationed on Maple Street. On Fridays, Crossing Guards come to the Police Station lobby to submit their time slips to the Sergeant.

14. Crossing Guards have no law enforcement responsibility or authority. When an incident occurs during their work hours, Crossing Guards write down a vehicle registration number and a description of the incident and report it to the Patrol Officers.

15. Crossing Guards do not receive pay increases, cost of living adjustments, paid sick, vacation, or holiday leaves, health, life, or disability insurance, retirement or other benefits. The Police Department does not have a job description for a Crossing Guard position, nor does it provide any training or assign weapons or cruisers to Crossing Guards.

16. Crossing Guards are not restricted from obtaining concurrent full-time or part-time employment outside the Police Department.

17. The Police Department does not have disciplinary procedures applicable to the Crossing Guards. No evaluations of Crossing Guards are conducted. Crossing Guards can be terminated by the Chief if necessary. They are not entitled to a hearing.

18. Crossing Guards receive weekly pay checks from the Secretary in the Police Department lobby. Crossing Guards do not have mail boxes at the Police Department. They do not have access to the locked area of the Police Department, which can be accessed only by using a key or being "buzzed in". Crossing Guards do not have keys to the locked area.

19. Crossing Guards do not attend any meetings at the Police Department; and they are not invited to annual outings with other employees of the Police Department.

20. Many of the Town personnel policies and procedures do not apply to Crossing Guards.

21. If a Crossing Guard is absent, the Chief asks one of the Patrol Officers to fill in. If no Patrol Officer is available, the Chief asks a member of the community school, usually a custodian or lead custodian to fill in.

22. According to Chief Murdough, Crossing Guards are outsiders at the Police Department.

Decision and Order

Decision Summary

The position of Crossing Guard is excluded from the proposed bargaining unit as the evidence is insufficient to prove that this position shares a community of interest with the other members of the proposed bargaining unit as required under RSA 273-A:8. Because after the exclusion of Crossing Guards the proposed bargaining unit does not contain a minimum of ten employees required under RSA 273-A:8, I, 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, 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). The Town claims, among other things, that Crossing Guards lack a community of interest with the full-time Patrol Officers and other employees in the proposed bargaining unit. 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*, supra, 140 N.H. at 352. In construing "community of interest," the factors to be considered are "skills, duties, working

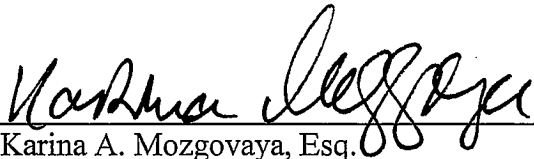
conditions and benefits of the employees, the organizational structures of the employer, and the extent to which the work is integrated.” See *Appeal of University System of New Hampshire*, supra, 131 N.H. at 372 (internal citation and quotation marks omitted).

In the present case, the evidence is insufficient to prove that Crossing Guards share a community of interest with the full-time Patrol Officers. Although Crossing Guards are Police Department employees, they do not have the same or similar conditions of employment nor are they in the same historic craft or profession of law enforcement. There is insufficient evidence of work integration or self-felt community of interest. In addition, many rules and procedures that apply to Patrol Officers, including disciplinary and evaluation procedures, do not apply to Crossing Guards; and Crossing Guards and Patrol Officers do not have common salary and fringe benefits structure. Based upon the record established at the hearing, Crossing Guards do not share a community of interest with Patrol Officers and are, therefore, excluded from the proposed bargaining unit.

After the exclusion of Crossing Guards, the proposed bargaining unit contains fewer than 10 employees. RSA 273-A:8, I provides that “[i]n no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest.” Accordingly, the NEPBA’s petition is denied. Because the NEPBA’s petition is denied pursuant to RSA 273-A:8, I, it is unnecessary to address other objections raised by the Town.

So ordered.

September 23, 2011


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

Distribution:
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