

NH Supreme Court declined appeal of this decision on September 17, 1997, Supreme Court Case No. 97-231.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

v.

TOWN OF RINDGE, POLICE
DEPARTMENT

Respondent

CASE NO. M-0728

DECISION NO. 96-066

APPEARANCES

Representing Teamsters Local 633:

Thomas D. Noonan, Business Agent

Representing Town of Rindge Police Department:

Thomas P. Mullins, Esq.

Also appearing:

Jason Poitras, Rindge Police
David J. Collum, Rindge Police
David A. Aho, Town of Rindge

BACKGROUND

On March 13, 1996, Teamsters Local 633 of New Hampshire (Union) filed a petition to certify a fourteen (14) member bargaining unit to consist of employees of the Rindge Police Department. Notice of filing of the petition and notice of hearing were sent but no response was received from the Town of Rindge (Town). A hearing commenced on May 15, 1996, but was continued when the Union objected to late notice of the Town's exceptions and when the Town objected to the Union's failure to

bring witnesses to support its position on an admittedly contested proposed certification. The matter was heard before the undersigned hearing officer on June 21, 1996, following which the record was closed.

The Town takes exception to the inclusion in the bargaining unit of six part-time police officers who, they allege, are "on call" pursuant to RSA 273-A:1 IX. Further, the Town objects that the remaining eight (8) positions are insufficient in number to be certified as a bargaining unit. RSA 273-A:8 I (d).

FINDINGS OF FACT

1. The Town of Rindge employs police officers and other personnel and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Officer Jason Poitras has been employed for five years as a police officer for the Town. For the first two and one half years of that time, he worked as a part-time officer who was scheduled for certain shifts and was called to work when a full-time officer was ill or on vacation. This dual arrangement of scheduled plus "on call" work was common until the Rindge Police Department received a three year federal grant which allowed the Town to hire another full-time officer and to discontinue the regular scheduling of part-timers effective March 1995. Regular scheduling of part-time officers is likely if the Town does not fund the federal grant position at the end of three years.
3. Chief David Collum testified that part-time officers are no longer scheduled for shifts on the monthly staffing calendar since former part-time officer Aaron Thompson became a full-time officer under the 1995 federal grant. However, part-time officers are scheduled on the monthly calendar when there is a vacation opening to be filled. He stated that, during his seventeen years as the Rindge Chief of Police, probably ten officers who began as part-time officers became full-time officers. At least three former part-time officers are presently working as full-time officers.
4. Both parties referred to yearly rosters giving hours worked by "Part-time Officers." Each of three lists contained five or six names with several names appear-

ing on the part-time lists for multiple years. Testimony was that, when Aaron Thompson became a full-time officer, Officer Duruseau was hired to fill out the part-time roster and that he is presently included in the monthly schedule since he remains in training.

5. All part-time officers attend police training and are certified as part-time police officers. Both Chief Collum and Officer Poitras were able to name those holding the six part-time positions, three of whom are working as full-time officers for other towns and three of whom are holding other employment. The part-time officers receive no vacation, sick or retirement benefits but, as with full-time officers, they receive a uniform allowance and are paid time and one-half when they work on holidays.

DECISION AND ORDER

RSA Chapter 273-A enables public employees to organize for the purpose of collective bargaining with their employers. RSA 273-A:8 places authority for the determination and certification of bargaining units with the Public Employment Labor Relations Board. Excluded from the definition of "public employee" are those "in probationary or temporary status, or employed seasonally, irregularly or on call." RSA 273-A:a IX (d).

However, there is a distinction between part-time employees and "on call" employees in that part-time employees are freely included in bargaining units with full-time employees so long as there are similarities in working conditions which bind them into a community of interest. In determining whether or not these six employees are permanent part-time employees or excludable "on call" employees, the circumstances of their employment must be considered. One question to be answered in making this determination is whether there is a reasonable expectation of continued employment. Keene State College Association v. State, 119 N.H. 1,3 (1979).

These workers are referred to as "part-time employees", not "on call" employees, in the headings of police department yearly rosters which accompanied the Town's Objection received on May 31, 1995. Several names on the roster are repeated in successive years' rosters. For three years of the last four years, the group of part-time officers worked at least one thousand hours. These part-time officers are placed on the schedule to cover vacations. The positions began as scheduled positions and may return to that status. Certification is required and a formal

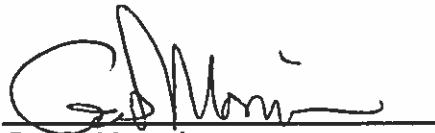
hiring process is used to fill any vacancy for one of these six positions. After hire, part-time officers are trained while in the employ of the town. Part-time officers are issued Rindge Police Department uniforms and receive a uniform allowance to maintain them.

Here are six actual positions which are relied upon by fellow officers and the Rindge Police Department in order to maintain the level of staffing acceptable to the Town. When one part-time officer was promoted to a full-time position in 1995, the hiring process began and the part-time position was again filled. These officers are employed and can reasonably expect their employment with the Town to continue as part-time officers, if not as full-time officers, should a position become available.

The bargaining unit appropriate for the Town of Rindge Police Department is a fourteen member unit which consists of full-time officers (5), part-time officers (6), sergeant (1), animal control officer (1) and the combined position of secretary/dispatcher/matron (1).

So ordered

Signed this 21st day of August, 1996.



Gail Morrison
Hearing Officer