



Appeal to NH Supreme Court
withdrawn on July 12, 2001,
NH Supreme Court Case No.
2001-310.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Teamsters Local 633 of New Hampshire	*	
	*	
Petitioner	*	
	*	Case No. M-0774
	*	
v.	*	
	*	Decision No. 2001-009
	*	
City of Rochester, Rochester Public Library	*	
	*	
Respondent	*	
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REPRESENTATIVES

For Teamster Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

For the City of Rochester, Rochester Public Library:

Thomas J. Flygare, Esquire

Also Appearing:

Dorina Howard, Librarian I
Cynthia Scott, Interim Library Director

BACKGROUND

The Teamsters Local 633 of New Hampshire, (hereinafter referred to as the "Petitioner") filed a Petition for Certification with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") on November 20, 2000 proposing creation of a single bargaining unit comprised of all regular full time and regular part time positions entitled "Librarian", "Library Assistant", and "Secretary" employed by the

City of Rochester (hereinafter referred to as the "City") at the Rochester Public Library . On that same day, the PELRB forwarded a "Notice of Filing" to the City to the attention of its City Manager. On November 28, 2000 a separate notice setting a hearing to be conducted on December 15, 2000 was forwarded to the parties. On December 4, 2000 counsel to the City filed correspondence with the PELRB that was interpreted as a request for a continuance of the scheduled December 15, 2000 hearing. Following consent of the Petitioner, a continuance was granted and a new hearing scheduled. The City filed its exceptions to the petition on December 5, 2000 and amended those exceptions on January 11, 2001.

A hearing on the matter was held before the undersigned hearing officer on January 18, 2001. At the commencement of the hearing, the City, by oral motion of its counsel, withdrew its exception founded on Pub 302.02 (b) that the proposed unit would undermine the efficiency of government operations. Without objection, the Hearing Officer accepted the withdrawal. At the close of the evidentiary hearing, the record was left open for production of a so-called "Chain of Command List" by the city and the parties were allowed to submit legal memoranda. The Petitioner chose to present a closing and waived the opportunity for submission of a memorandum of law in support of its case. The City filed the requested list and its legal memorandum on February 2, 2001. No objection nor responsive memorandum received from the Petitioner, the record was closed on February 2, 2001.

FINDINGS OF FACT

1. The City of Rochester (Respondent) employs persons to carry out the functions of municipal government within the Rochester Public Library and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The Teamsters Local 633 of New Hampshire (Petitioner) seeks to become the exclusive bargaining representative of a proposed bargaining unit comprised of certain employees of the Respondent who perform work at the Rochester Public Library.
3. All subject employees are employed within the single work location at the Rochester Public Library. They are all City of Rochester employees and are paid subject to a common pay plan that includes a maximum step that prevents compensation increases for certain senior personnel. They all operate within a single organizational unit subject to the directives of the Library Director as department head and the City Manager as chief executive officer of the city. They are subject to common work rules promulgated by the City of Rochester.
4. Dorina Howard is employed as a Librarian I. She has a bachelor's degree and a master's degree. She testified that her duties are focused on the manual

cataloging of ordered material and data input. She works on a daily basis with both Librarian II's, other Librarian I's and with Library Assistants.

5. Ms. Howard testified that she "oversees" a full time Librarian I and a part-time Librarian I usually involved with the Technical Services section. She testified that one of these employees has a bachelor's degree but that she did not know whether the other had a degree or not. She did not hire either of them. She is employed within a hierarchy of three or four levels of personnel with varying degrees of supervisory authority involved in the operation of the Rochester Public Library. This does not include consideration of the Library Board of Trustees. The record is sparse as to their role, if any, in the supervision of the Library as depicted in the Organizational Chart offered by the City. (City Exhibit #1).
6. Ms. Howard and other Librarian I's and II's participate in and partially conduct annual evaluations (e.g. City Exhibit #6) and in abbreviated six month evaluations (e.g. City Exhibit #5) of personnel which are, in her case, submitted directly to the Library Director. She indicated that she discusses these evaluations with the Library Director on occasion, but indicated that the Library Director determines whether or not any raise is given to an employee. Reference to the documents reveal that the Library Director exercises approval authority over the six month abbreviated evaluation (e.g. City Exhibit #5) which does not affect wages. The annual evaluations submitted into evidence reveal that there is no finality regarding a wage increase or any indication of a termination included in that part of the evaluation completed by either a Librarian I or Librarian II. Their evaluative comments are submitted to the Library Director as the department head. Any wage recommendation is made by the Library Director and that recommendation then goes on for the approval of the City Manager as chief Personnel Officer of the City (e.g. City Exhibits #4, #6, #10, #13, #14).
7. Ms. Howard further testified that she did not have the final authority, nor did other Librarian I's and II's, to hire or terminate other personnel nor the authority to do so subject to the approval of the Library Director. The Interim Library Director's testimony indicated that these were actions she would normally would recommend to the City Manager.
8. Ms. Howard has filled in as a Librarian II and as Reference Librarian I and II. In addition, she has performed Librarian Assistant jobs and stated that other Librarian I's have similarly filled positions when necessary. In general she characterized the day to day operation in the workplace as a "co-mingling of jobs." She testified that the employees "know their jobs and they do it". Little supervision of any significant nature appears to take place on a day to day basis among the foregoing four categories of employees.

9. It is the Library Director that recommends the proposed rate of pay increase, if any, on an employee's annual evaluation. (e.g. City Exhibit #4, #10, #11).
10. Ms. Cynthia Scott is presently the Interim Library Director having resigned as Library Director shortly before this petition was filed and has now been rehired as Interim Library Director. She has served a combined seven years as either acting, interim or full Library Director.
11. Ms. Scott testified that she was not the Library Director during the time period in which City Exhibits numbered 4 through 13 relating to the process by which employees are evaluated were undertaken and therefore did not participate in their formulation as had Ms. Howard.
12. Ms. Howard testified that if it becomes busier than normal and it becomes necessary to set priorities, the Library Director's "inkling" determines what the employees will do and the Library Director assigns the work shifts.
13. As to discipline, Ms. Howard testified that her disciplinary authority was never explained to her and that while she may sometimes attempt to resolve conflicts between two subordinates, she does not believe she has the authority to discipline employees and would just report any situation requiring discipline to the Library Director and ask "What do you want to do?" Further, Ms. Howard stated that if the Library Director were not available she would address the situation by (1) "either talking to everyone else in the library" or (2) "wait till the Director came back", or (3) "would call the Director's Secretary."
14. Ms. Scott described the organization chart for the Rochester Public Library indicating the positions held by employees seeking to form a bargaining unit (City Exhibit #1). A later undated "Chain of Command List" that she referenced in testimony was submitted after the hearing as City Exhibit # 15. Ms. Howard was not aware of its existence nor that it reflected the operational reality of the day to day business of the library.
15. Ms. Scott testified that Librarian I's, Library Assistants and pages can be assigned from time to time to work in more than one sub-unit of the library. In two of the four sub-units, namely Circulation and Technical Services, a Librarian I serves as the "top supervisor. Both Librarian II positions were vacant at the time of the hearing and Librarian I's were acting in those roles.
16. Ms. Scott indicated in her testimony that the job descriptions for Librarian I and Librarian II were, "generally accurate" (City Exhibits #2 and #3) No testimony was offered as to when such job descriptions became effective or as to the extent to which they were current. However, the testimony relating to the day to day operation of the Library and actions of its personnel did not

comport with the duties, particularly those of the Librarian II positions, depicted in the written job descriptions.

17. The supervisory responsibilities of persons holding the position of Librarian II are detailed in the City's job description (City Exhibit #2) in relevant part as follows:

"Incumbent provides general supervision up to eleven personnel, providing staff initial instructions and guidance. Incumbent exercises a full scale of supervisory responsibilities, both for a small department staff and for the library staff as a whole, when directed by the library director, evaluating performance, training, making work assignments, developing work schedules and administering any necessary discipline."

18. The supervisory responsibilities of persons holding the position of Librarian I are detailed in the City's job description (City Exhibit #3) in relevant part as follows:

"Incumbent provides general supervision up to seven regular employees and volunteer staff, providing staff initial instructions and guidance."

19. Ms. Scott testified that the final authority to fire and to hire employees within the library lies with the City Manager and he also approves the starting salary of new employees. Additionally, she made reference that the City Manager has final sign-off authority on employee evaluations and has the authority to approve, deny or modify her recommendations for merit pay increases.
20. While ultimate authority for establishing the hours of work may lay with the City Manager, it is the Library Director and not the Librarians II's or Librarian I's that initially schedules those hours of service or shifts necessary to operate during those hours..
21. There is no indication in the testimony that any of the Librarian I's or II's dispense any disciplinary sanctions. The only example cited was a single incident report (City Exhibit #9) to which there was no testimony of any discipline applied to the employee except an inference in the Library Director's comments that the Library Director would "assess" the employee's work pattern at a latter date. As no other evidence provided examples of discipline meted out by Librarian II's or I's, it appears that the only disciplinary duty inherent in these positions is to report an incident to the Library Director for her to exercise her discretion in meting out appropriate discipline.

22. There is no formal program of advanced study required to be hired as a Librarian II or as a Librarian I. The educational and experiential requirements referenced in the written job descriptions for both Librarian I and Librarian II positions allow library experience to substitute for a Master's Degree in Library Science. The Librarian I position does not require a bachelor's degree in Library Science. There was no testimony that either the Librarian I's or II's were subject of any licensure board, subject to any ongoing certification or education, or are required to continue to attend professional development education or other incidents characteristic of professional status.

DECISION AND ORDER

The legislative mandate of the Public Employee Labor Relations Board (PELRB) includes, *inter alia*, the determination of appropriate bargaining units. The PELRB has the responsibility for deciding whether a public employee collective bargaining unit is appropriate for certification, and, if so, the composition of that bargaining unit. RSA 273-A:8. Each bargaining unit is to be reviewed on its own circumstances on a case by case basis. Appeal of Town of Newport, 140 N. H. 343, 352 (1995). "Ultimately, the question is whether there exists a mutuality of interest in working conditions such that it is reasonable for the employees to negotiate jointly." University System v. State of New Hampshire, 117 N. H. 96, 100 (1977), see also Appeal of the University System of New Hampshire, 120 N. H. 853, 855 (1980).

The City filed exceptions requesting that two Librarian II positions be excluded from the proposed unit because of their supervisory responsibilities pursuant to RSA-A:8, II. It also asserted that the positions of Librarian I (Circulation) and Librarian I (Technical Services) should be excluded from the proposed unit because of their supervisory responsibilities also pursuant to RSA-A:8, II. It further objected to the proposed unit alleging that it contained both professional and non-professional employees in contravention of RSA-273-A:8, II. Lastly it objected to the formation of the unit, as proposed, because it would undermine the efficiency of government operations pursuant to Pub 302.02(b). This last regulatory basis for exclusion was withdrawn by the City at the outset of the hearing and therefore is not otherwise considered in this decision.

This analysis begins with consideration of whether or not a community of interest exists among the proposed members of the bargaining unit RSA 273-A:8 I and Pub 302.02 (b). Such a consideration in this case reveals that all employees included in the petition perform labor and have a share in the City's goal of delivering library services to the public. They do so with the same benefits and conditions of employment. All proposed members are employed within the same organizational unit and perform their primary duties from the same location at the Rochester Public Library. The library is a self-contained community functioning in a setting unique to it by virtue of its function and hours of operation. From the testimony of both witnesses, regarding work assignments and the approach utilized to deliver library service and the self-felt community of interest among the present employees, there is a sufficient community of

interest exists among these petitioned positions to allow the formation of a bargaining unit.

The analysis then proceeds to weigh whether or not exceptions affecting certain positions call for their exclusion from the proposed unit. Specifically, the City has requested that the Librarian positions referenced in the petition, and revealed through evidence to now include the separate positions of Librarian II and Librarian I, be excluded. The first reason given for their exclusion is their supervisory role. Since its creation the PELRB has retained the primary authority to define and interpret the term "supervisory" in the context of collective bargaining. Department of Revenue Administration v. Public Employee Labor Relations Board, 117 N. H. 976 (1977); Appeal of the City of Concord 123 N. H. 256 (1983). When the PELRB is asked to examine exclusions based upon a supervisory relationship, it is guided, in part, by the standard expressed by the court in Appeal of East Derry Fire Precinct, 137 NH 607, 611 (1993) which provides that "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." Further guidance provided by the court indicates that the PELRB should consider the employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority as well as other factors. Ibid. at 610.

The court has on occasion reviewed specific facts and concluded differently from the PELRB as to whether circumstances in a particular case created the level of supervisory authority vested in employees performing certain supervisory functions that would elevate them to that level of "supervisory authority involving the significant exercise of discretion" contemplated by RSA 273-A:8 II. Appeal of E. Derry Fire Precinct, 137 N. H. 607 (1993); Appeal of Town of Newport, 140 N. H. 343 (1995); and In re Town of Stratham, 144 N. H. --- (1999). But neither the PELRB nor the Court has ignored nor abandoned the underlying purpose served by this distinction being made, which is the avoidance of "conflicts between the two groups because of the differing duties and relationships which characterize each group," Ibid. Appeal of E. Derry Fire Precinct, at 610, citing Appeal of Manchester Bd. of School Comm., (1987) 129 N. H. 151,153. Thus, both an examination of the degree of significance of the exercise of discretion and the propensity to create conflict within the bargaining unit because of the differing duties and relationships should be considered when determining the exclusion of certain employees from a bargaining unit that otherwise would be appropriate for their inclusion.

The instant matter involves persons employed in the delivery of library services and does not present the circumstances at issue in either of the firefighter/fire officer cases, Appeal of University System of N. H., 131 N. H. 368 (1988) or Appeal of E. Derry Fire Precinct, 137 N. H. 607 (1993). In Appeal of University System of N. H., 131 N. H. 368 (1988) those cast in supervisory roles participated in evaluations where their evaluation was given weight in granting merit pay increases and in terminating new employees. Supervisory duties included assigning work, ensuring shifts were fully staffed and taking command at the scene of a fire. Likewise in the East Derry case, the

evaluations undertaken by those fire officers included an affect on hiring and terminating firefighters and included the authority to send unfit firefighters home. The evidence presented in the instant case involves library employees and the evidence does not disclose a genuine vesting of discretionary authority to anyone other than the Library Director and/or the City Manager to hire or terminate an employee or to exercise the discretion to grant an increase in wages, or to assign shifts to library employees.

With respect to exercising discipline over others, in the firefighter cases cited above their exercise of disciplinary authority included assessment of fitness for duty and issuing warnings and even extended to sending personnel home if deemed unfit by them. In this instant case, the environment and operating style existing within the library appears to have created, for better or worse, a workplace where even an employee who might be determined to be inappropriately clothed would not be sent home but possibly assigned to do work out of the view of the public. That action might be taken by a Librarian I or Librarian II in the absence of the Library Director being present to make a decision about sending them home. No evidence of any discipline having been meted out by a Librarian I or II was offered. Indeed, it appears that an incident report is the only vehicle in use and it serves the function of elevating a decision on a potential disciplinary measure to the Library Director for action. In the incident report at hand, (City Exhibit #9) the disciplinary action utilized by the Library Director was to "revisit" goals that had been agreed to by the Reference Librarian at the time and one of the people working in the reference area under her supervision. The Library Director also her intent to assess the work pattern of the specific employee at a later time.

In the more recent of the two firefighter cases referenced above, Appeal of E. Derry Fire Precinct, 137 N. H. 607 (1993), the court acknowledged that "some employees performing supervisory functions in accordance with professional norms will not be vested with the requisite degree of discretion in the exercise of authority. Ibid. at 611; also cited in the Appeal of Town of Newport, 140 N. H. 343 (1995). Significantly, both the Union witness and the City' witness used the words "oversight" or "oversee" when characterizing the method of supervision exercised on a day to day basis within the library. Ms. Howard's testimony about the "co-mingling" of job tasks and responsibilities was credible and the only testimony addressing that point offered by the Library Director was that employees would fill in for others of higher rank at times although they would not be so compensated unless it were for a lengthy period of time.

In the Appeal of Town of Newport, 140 N. H. 343 (1995) the issue was the composition of a multi-disciplinary middle managers' bargaining unit engaged in the performance of several public works functions and the fire lieutenants. The inclusion of fire lieutenants in that case is not relevant to the instant matter as the deciding factor was community of interest within a multi-disciplinary unit and not their supervisory status *vis-a-vis* firefighters. Crucial to the court's finding of the requisite significant supervision exclusion of those supervisory positions was their authority to recommend hiring, retention, and dismissal of employees, to approve leave requests, and to be responsible for disciplinary action. This combination of discretionary ingredients is not presented by facts of the instant case.

In the instant matter, the job description for the position of Librarian II details the supervisory duty as follows:

“Incumbent provides general supervision up to eleven personnel, providing staff initial instructions and guidance. Incumbent exercises a full scale of supervisory responsibilities, both for a small department staff and for the library staff as a whole, when directed by the library director, evaluating performance, training, making work assignments, developing work schedules and administering any necessary discipline.”

However, testimony offered in part, and not in contravention, by both witnesses depicted a scene of a quite more ministerial performance of supervisory actions by the Librarian II's than incidents of supervisory authority relied upon in Appeal of Town of Newport, 140 N. H. 343 (1995).

The description of supervisory duty contained within the written job description of the Librarian I position pales, even in written form, to approach the significant level of discretion of supervisors called for by RSA 273-A:8 II when it describes their supervisory duty as follows:

“Incumbent provides general supervision up to seven regular employees and volunteer staff; providing staff initial instructions and guidance.”

As with the analytic consideration of the general supervisory role of Librarian II's and Librarian I's and their role in the meting out of discipline to subordinates in this case, it does not appear that the roles these positions play in employee evaluations present the existence of the “significant exercise of discretion” found in RSA 273-A:8, II. In the use of common language there is sense of import or substantiality when one indicates that an act is significant, that it is “(b) full of meaning, 2. important; momentous,” *Webster's New World Dictionary, Second Edition* at 1325. Indeed, the exercise of discretion connotes independent authority at work. The concept of authority, again as defined in *Webster's New World Dictionary, Second Edition* at 94, speaks of “the power or right to give commands, enforce obedience, take action, or make final decisions.” The testimony of these two witnesses, one the Library Director and the other a Librarian who works with others of similar, higher, and lower rank, addressed the manner and method of employee evaluations utilized within the Rochester Public Library. The impact of the latter's participation and that reported for Librarian II's as well, simply is not accorded effective significance or that degree of finality in the evaluative process subject, as their input is, to three or four higher levels of review.

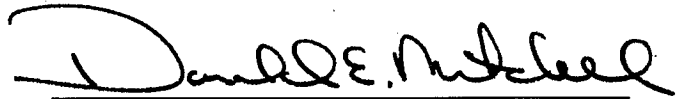
As the facts of this instant case relevant to and descriptive of the nature and impact of the supervisory role played by Librarian II's and Librarian I's do not meet the statutory standard of RSA-273-A:8, II nor pass the necessary examination of factors expressed in Appeal of Town of Stratham, (1999) 144 N. H. --, citing Appeal of East Derry Fire Precinct, Ibid. at 610, the exclusion of the two position classifications of Librarian II and Librarian I based upon the supervisory exclusion requested by the City is denied .

Nor is it found that these two positions qualify as professional employees, at least within the context of collective bargaining and RSA 273-A:1,VIII. Both the position of Librarian II and Librarian I indicate that three years of experience may be substituted for the advanced master's degree. Therefore it cannot be maintained that a formal program of advanced study is required to be hired as a Librarian II or as a Librarian I. The Librarian I position does not require a bachelor's degree in Library Science. There was no testimony that either the Librarian I's or II's were subject to any licensure board, or subject to any ongoing certification requirements, or required to obtain a master's degree in Library Science or other incidents characteristic of professional status.

The bargaining unit to be submitted for certification shall consist of all employees in the classifications of Librarian II, Librarian I., Library Assistant and Secretary.

So Ordered.

Signed this 15th day of February, 2001.


Donald E. Mitchell, Esq., Hearing Officer