



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE

Complainant

and

TOWN OF DERRY, UNIT DETERMINATION

Respondent

CASE NO. 'P-0743

DECISION NO. 87-28

APPEARANCES

Representing the State Employees' Association of New Hampshire

Ward P. Freeman, Representative SEA

Representing the Town of Derry

Gary Wulf, Negotiator, Town of Derry

Also in Attendance

Edward B. Garone, Derry Police
Craig W. Bulkley, Town Administrator
Paul D. Canfield
George Feole
Paul Lutz

BACKGROUND

The State Employees' Association of New Hampshire, Local 1984, SEIU, ("Association") filed a petition of Certification for a Unit in the Town of Derry ("Town") consisting of the "full-time police supervisors with the rank of Sergeant and Lieutenant, and the Prosecutor", the petition was filed on October 14, 1986.

The Town objected to the composition of the Unit, Specifically, the Town argued that the Lieutenants/Patrol were management personnel and should not be included in the Unit and are the supervisors of the sergeants who would be in such a Unit. The Town also objected to the inclusion of the prosecutor in the Unit on the grounds that the position did not share a community of interest with the others because it was such a different position in terms of reporting hours of work and compensation. The Town also maintained that the position was a "professional" one and should not be included in the bargaining unit.

A hearing was held on February 24, 1987, and continued on March 2, 1987 at the Public Employee Labor Relations Board office in Concord, New Hampshire.

FINDING OF FACTS

- 1) Lieutenants serve as shift commanders, rotating shifts every six (6) months; are paid by the hour; work four (4) days and are off for two (2) and are paid more if they work on a holiday.
- 2) A shift is usually composed of a lieutenant, a sergeant and several (8) patrol officers.
- 3) Two (2) captains are assigned, one (1) to the Services Division (records, detectives, etc.) and one (1) to the Uniform Division (patrol officers, etc.)
- 4) Captains work a five (5) day, daytime hours, no holidays and are paid a salary, not hourly and has department car.
- 5) The Captain in charge of the Uniform Division makes assignments, makes enforcement decisions, overtime and generally takes a longer view than most day-to-day operations.
- 6) Lieutenants generally do not make assignment of days off but recommend to Captain and may make changes in their shifts.
- 7) In case of an important event, such as a major crime or death or major officer injury, department policy is that lieutenants (shift supervisor) report such to the Captain and Chief.
- 8) Lieutenants can work overtime (voluntary) and can work on "paid detail" same as sergeants.
- 9) Prior to current SEA activity, the lieutenants and sergeants and captains had a collective agreement with the Town. Recently, (two years) changes were made (car, etc.) and captains were separated from this group.
- 10) On June 30, 1986, the previous agreement expired and some negotiations took place but lieutenants and sergeants and prosecutors got no pay raise while captains and patrolmen (in separate bargaining unit) did.

- 11) Sometimes sergeants serve as "shift supervisor" (not commander) when lieutenants are off or not assigned to shift, in which case, the sergeant reports to the Captain or Chief, (and is paid more during this time).
- 12) Department general orders (See Union #1-8) refer to lieutenants and sergeants as "Supervisor(s)" in many places.
- 13) The police prosecutor has the rank of patrolman but is paid at the level of a lieutenant and is a sworn police officer, reporting directly to the Chief.
- 14) The police prosecutor was in the patrol bargaining unit until mid 1984 when his salary began and he was paid as if he was a lieutenant. The prosecutor now performs in this one job, he has dropped all former procedures, and works 8:30 to 5 p.m., Monday-Friday and not usually in uniform.
- 15) The police prosecutor had been a patrol officer for three (3) and one-half ($\frac{1}{2}$) years prior to beginning prosecutorial work in 1979 and had no special educational training beyond an Associate Degree in Criminal Justice with no particular focus on prosecutorial duties. The Prosecutor's position does not require a degree.
- 16) The current prosecutor has pursued various training and schooling programs for prosecution since taking on his job, perhaps accounting for two-to-three months time over the six to seven years on the job.
- 17) The prosecutor has some discretion about prosecuting a case but it also depends on the case and the availability of the Chief to consult.
- 18) The prosecutor has no authority in running the Department; has no significant policy role in the Department, although he does brief the Chief on how well cases have been developed.
- 19) The prosecutor does attest to the presence in court of other officers by signing their pay slips and will report to the Chief if any officer does not show up for court; but cannot order officers to re-do reports but must refer them to the Captain in order of command.

- 20) The current prosecutor feels a "community of interest" with the sergeants and lieutenants because he says he socializes with them to some extent and compares his responsibility level with theirs.

RULINGS OF LAW

- (1) There are no significant differences in the quality of the supervision carried out by the lieutenants and the sergeants. They both serve as supervisors of patrol officers, may both supervise the entire shift (although with different titles and pay) and differences in responsibility are such that they constitute no barrier to inclusion in the same supervisory unit.
- (2) The prosecutor is not a "professional employee" under RSA 273-A because he does not exercise an independent degree of discretion sufficient for qualification to the category nor is his training and education sufficient to qualify his activities as that of a professional attorney. This is not to say that he does not perform a very responsible and unique task. Clearly he does and the Chief and the Department have recognized that, through the pay for this position and in the fact that the Prosecutor operates in civilian clothes, in closed consultation with the Chief, exercising discretion and confidentiality, etc.
- (3) The Prosecutor is paid on the same level as a lieutenant, although at the rank of patrolman, and carries out his job in such manner as to distinguish himself from the other patrolmen in the force and can properly be joined with the sergeants and lieutenants in the same bargaining unit.

DECISION

A bargaining unit is hereby created, composed of the following positions: all full-time police supervisors with the rank of sergeant and lieutenant, including the prosecutor.



ROBERT E. CRAIG, CHAIRMAN

Signed this 9th day of April, 1987.

By unanimous decision, Chairman Craig presiding, members Roulx and Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.