



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF N.H. :
 LOCAL 1984, S.E.I.U., AFL-CIO :

Petitioner :

v. :

TOWN OF SALEM, NEW HAMPSHIRE :

Respondent :

CASE NO. S-0381

DECISION NO. 89-32

APPEARANCES

Representing Local 1984, SEA of N. H., SEIU, AFL-CIO:

Kathy J. Duval, Director of Organizing

Representing the Town of Salem, N. H.:

Nicholas Manolis, Personnel Director

Robert P. Leslie, Esq., Counsel

Also appearing:

Jean Williams, Tech. Proc. Librarian
 Patsy H. Dreyer, Administrative Secretary
 Julie Kamal, Program Coordinator
 Robert P. Dennis, Sr., Streets/Shop Superintendent
 Robert D. Ciandella, Esq., Town Attorney
 Lorraine Thompson, secretary to Town Manager
 Tracey Haynes, Police Dispatcher
 Sally Swett, Elderly Coordinator
 Daniel Pacheco, Utilities Superintendent
 Stillman Kealey, Building Official
 Kathryn Welch, Asst. Planner
 Alfreda Payne, Alt. Youth Service Coordinator
 Cheryl Bolouk, Asst. Finance Director
 John Bernard (Karen Landry's Supervisor)

BACKGROUND

The State Employees Association of N. H., Local 1984, SEIU, AFL-CIO, on January 27, 1989 petitioned for a proposed unit of clerical, technical and administrative, full time and permanent part-time employees in the office of the Town Manager, Departments of Police, Fire, Finance, Legal, Recreation and Engineering, Divisions of Data Processing, Personnel, Planning, Public Works, Building and Inspections, Town Clerk, Probation, Assessing and Tax Collection, Seniors Program and the Kelley Library. To be excluded from the unit as supervisory, the Fire Chief, Assistant Fire Chief, Fire Marshall, Police Chief, Commander, Finance Director, Data Processing Manager, Director

of Engineering, Lieutenant, Welfare Director, Planning Director, Chief Assessor, Director of Library, Recreation Director, Public Works Director, Public Works Superintendent and Chief Building Official; excluded as confidential, the Town Manager, Personnel Director and Town Attorney.

Out of approximately 81 positions, the Town agreed to the inclusion of only 23 positions alleging that all other positions were either: (1) confidential, (2) all library positions responsible to a jurisdiction other than the Town, (3) positions already represented by a bargaining unit represented by another union, (4) positions "professional" in nature and not sharing a community of interest with the clerical/secretarial positions suggested by the Town as an appropriate bargaining unit, (5) varying duties/responsibilities, hours of work and uniform requirements, and (6) all permanent part-time positions. The Town further reserved the right to raise additional exceptions at the pre-determined hearing.

A hearing was convened by Board appointed hearing officer, Evelyn C. LeBrun, at the town offices in Salem on March 9, 1989 and reconvened on March 22, 1989 with all parties represented.

Following the March 9, 1989 conference, the parties met in an effort to narrow the positions which Local 1984, SEA, proposed to include in the unit. The meeting resulted in general consensus regarding the following: (1) confidential employees - the Town withdrew its exceptions to confidential employees except for Administrative Secretary, Anne Priestley, Administrative Secretary Lorraine Thompson and Permanent Part-time Clerk I Jonelle Derby and Alfreda Payne who is assigned to the Welfare Department; (2) Local 1984 agreed to exclude the library employees; (3) the Local proposed that the Town agree to drop its exception to the police dispatchers with the provision that if the Salem Police Relief proposes to modify its certification to include the dispatchers, the Town would agree to that modification; (4) the Town dropped its exception to the inclusion of the van driver and also its exceptions to employees which they originally listed as supervisory in nature; (5) the Town, however, maintained its exception to the following positions as professional: Senior Engineer, Engineering Technicians, Streets/Shop Supt., Building Officials, Sanitarian, Program Coordinator, Program Analyst, Supt. Parks/Properties, Deputy Assessor, Chief Probation Officer, Utility Supt., Engineering Aide, Purchasing Coordinator, Asst. Attorney, Legal Advisory/Prosecutor, Part-time Youth Coordinator, Asst. Planner, Asst. Finance Director and the Elderly Services Coordinator.

The Town alleged that the above "professionals" by virtue of the requisite education, experience levels, certifications and technical requirements established the positions as professional within the Town's organization. In addition, "crossover" positions which appeared on the SEA petition for certification also appeared on the certification petition filed by the Salem Management and Supervisory Association; namely, Asst. Attorney, Elderly Coordinator and Legal Advisory/Prosecutor.

Representative for SEA Local 1984 presented into evidence the process and procedure followed by the Town on the Merit System implemented for all "non-affiliated" employees who have successfully completed their probation period which also provides an appeal process through the Employee Review Committee; in addition, several memos were presented regarding not only the Merit System, but salary schedule, vacation accumulation and organizational plan.

Also provided was a copy of the Town's Personnel Plan, adopted by the Board of Selectmen on December 12, 1983, establishing the policies which are intended to provide a uniform basis for administration of the Town's personnel.

FINDINGS OF FACT

The petition submitted by SEA, Local 1984, was properly filed and met all the requirements of RSA 273-A:10, I(a) and II.

A modification petition to include the position of police dispatcher was filed and accepted from the Salem Police Relief. Certification of the unit was amended effective April 19, 1989.

The Town of Salem since January 1, 1984 has operated under a single Personnel Plan for all non-affiliated employees which includes a disciplinary procedure, affirmative action plan, hours of work, sick leave provision, holidays, vacation plan, leaves of absence, life, disability and dental insurance, etc.

Representatives from various groups of non-affiliated employees met on a yearly basis to prepare requests for improvements to be presented to the Board of Selectmen regarding their wages and fringes. Following submission, employees were presented with a memorandum outlining the adjustments to their wage and fringe benefit package. Included in the package was a new salary schedule for each salary grade from Clerk I, II, Senior Clerks, Admn. Secretaries, Administrative Technicians, Division Heads, Department Heads and Managers.

Documentation in memos from the Town Manager and Personnel Director dating back to September of 1985 substantiated the evidence presented at the hearing.

Given the fact that prior bargaining history, although informal between the employer and this particular group of employees, existed and was reduced to writing over the past four years was an important factor in this determination.

The "professional" versus "non-professional" employees remained as the only outstanding issue. Webster defines professional as relating to, or characteristics of a profession; secretaries, accountants, technicians, etc. are different professions and all equally important in the overall operation of the Town. In reviewing all the evidence and testimony presented, I find that the SANITARIAN/HEALTH OFFICER is a "professional" within the meaning of RSA 273-A, involving the consistent exercise of discretion and judgment, and should be excluded from the unit unless voting separately elects to join the proposed unit.

The ADMINISTRATIVE ASSISTANT to the Town Manager of necessity must be excluded as a confidential employee as all labor relations activities and information would be part of the records in the Manager's files.

Request for Findings #1 thru 7 granted; #8-9 see Hearing Officer's findings; #10 thru 13 granted; #14 denied; #15 thru 27 granted and #28 denied.

DECISION AND ORDER

The unit as proposed by the State Employees Association of N. H., Inc., Local 1984, S.E.I.U. except for the library employees, police dispatchers, administrative secretaries (Town Manager's and Personnel Director's office) Senior Engineer, Legal Advisor/Prosecutor and the part-time Clerk I position in the Personnel Director's office is a proper unit. The determination of the inclusion of the Sanitarian/Health Officer to be decided at the election.

The Sanitarian/Health Officer (Professional) will have the right to vote on whether or not she wishes to be included in the proposed unit. That ballot will read, as follows:

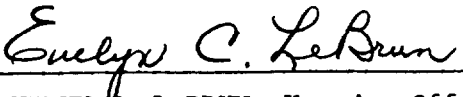
"Do you wish to be included in the same bargaining unit as the non-professional employees of the Town of Salem?"

Yes ☐

No. ☐

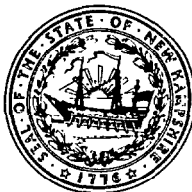
This ballot shall be segregated from other ballots cast during the course of the election. Once polls have closed, the Board agent will tabulate the ballots. If the Union wins the election, the Board agent shall review the ballot cast by the Sanitarian/Health Officer to determine whether she has voted to be included in the unit with the non-professional employees.

Her vote for or against the Union representation will be sealed and not counted unless it becomes dispositive of the outcome. Also, should she vote not to be represented and the Union wins, her ballot will be destroyed in order to preserve the secrecy of her ballot. The larger group of employees should determine whether they wish to be represented by SEA, Local 1984 or "No Representative".



EVELYN C. LeBRUN, Hearing Officer

Signed this 25th day of April, 1989.



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EVELYN C. LeBRUN, Hearing Officer

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