State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROLLINSFORD POLICE ASSOCIATION Petitioner TOWN OF ROLLINSFORD SELECTMEN Respondent	CASE NO. P-0745 DECISION NO. 89-42

APPEARANCES

Representing Rollinsford Police Association:

William P. Briggs, Counsel

Representing Town of Rollinsford Selectmen

Bradley F. Kidder, Counsel

Also Appearing:

David Cobban, Patrolman, Original Petitioner
Thomas Mansfield, Selectman
James Morrissette, Patrolman
Robert Ducharme, Sergeant
Edward Jansen, Selectman

BACKGROUND

The Rollinsford Police Association petitioned PELRB for certification of a bargaining unit consisting of full-time and permanent part-time employees of the Rollinsford Police Department with the Chief and Lieutenant to be excluded. Original hearing in this matter was held at the Board's Office on June 16, 1988. As a result of this hearing and after exploring and considering all the evidence and testimony presented regarding full-time and permanent part-time employees, PELRB determined that the petitioner, Rollinsford Police Association met the requirement for certification as a bargaining unit under 273-A:8 and ordered an election under 273-A:10.

The Board, at the initial hearing on the bargaining unit, explored in detail, the work schedules of the full-time and permanent part-time employees of the Police Department and determined that the Association, with its full-time and part-time employees, met the minimum requirement of 10 employees as required by 273-A:8 (d). Eleven names were on the eligible voting list.

An election was conducted in accordance with 273-A:10 on September 13, 1988 which resulted in an 8 to 0 vote in favor of the union.

On July 25, 1988, the Board of Selectmen filed a request for rehearing, alleging that incorrect information had been given at the original hearing and that the Selectmen had not had the opportunity to prepare for the hearing.

PELRB considered the request for rehearing and found that all parties had been properly notified, (the usual 30-days notice of hearing was given), were advised of the subject matter and no new evidence was alleged to warrant granting of a rehearing. On August 23, 1988, PELRB, in accordance with Pub. 205.05 rules, denied the Motion for Rehearing--Decision No. 88-52.

At the time PELRB considered the petition to form a unit, it determined that there were eleven (11) positions eligible to be in the unit. At the election, there were eight who voted all in favor of creating the bargaining unit. As a result of the election, an order certifying the Rollinsford Police Association as the exclusive representative of the employees for the purpose of collective negotiations was issued and the Town ordered to negotiate with the Rollinsford Police Association.

Subsequent to the certification, the Town of Rollinsford filed with the Supreme Court. In an effort to resolve the matter, the parties requested the Court remand the case to PELRB. Supreme Court granted the request and hearing on the remand of this case was conducted at the PELRB office, April 13, 1987.

At the opening of the hearing, in an effort to avoid any potential conflict of interest, member Richard E. Molan recused himself, after conferring with Counsel for the Town, Atty. Kidder.

Atty. Briggs objected to Atty. Kidder's attempt to argue at this date, that the certified bargaining unit did not contain the 10 positions required. Atty. Kidder argued and presented as exhibits, copies of the Senate Journal of the 1975 hearing to create 273-A, regarding the requirements of 10 positions in order to create a bargaining unit as protection from unions, arguing that the minimum of 10 was to favor small towns and further, offered several exhibits showing scheduled police work, hours of work of what he termed "specials" and hourly employees of the Department.

Witness Edward Jensen, Selectman of Rollinsford, testified as to the personnel rules of the Police Department which were adopted in 1984 to which all personnel in the Police Department are subject to and further, as to the Social Security and Workman's Compensation coverage, of special and hourly employees of the Department. These rules refer to two categories of positions: full and part-time. Jensen, at the remand, insisted that the special part-time permanent employees who were considered at the initial hearing, were now hourly employees; and further, that full-time employees had to serve a probationary period of 1 year before gaining permanent status and six months for part-time employees; and that part-time employees designated as special officers were employed on an hourly basis. Jensen testified that there was a systematic schedule for weekend coverage by special officers which was

always filled by special officers rather than regular full-time officers.

He also testified that Rollinsford Police Department provided 24-hour coverage, staffed by full-time officers and special officers on weekends. And further reviewed individuals in the Department and work schedules. In answer to Board member Roulx's question, "Are special officers certified officers?" "Yes, they must be certified by the Police Standards Training Program or be willing to attend to obtain certification."

Subsequent to the original hearing on certification and the elections, the Town of Rollinsford had deleted from the budget, police positions and some positions have become vacant. Jensen testified that the Chief has the right to hire specials, however, all full-time officers hired had to be approved by the Selectmen.

FINDINGS

1. Pursuant to the original hearing in the matter of certification, a bargaining unit of the Rollinsford Police Officers was created. Testimony was offered and accepted that there were 4 full-time permanent police officers including the Chief and 8 part-time officers. The Chief to be excluded from the bargaining unit.

2. The Board found, based on testimony, that there existed at the time, 4 shifts that were required on weekends (to handle 24-hour coverage) staffed by part-time permanent employed special officers.

3. Testimony of Selectman Jansen, at the original hearing was forceful but not persuasive of his opinions--that special officers should not be included in any bargaining unit.

4. The weekend shifts in the department were and are required in order to provide 24-hour coverage, totally manned by special officers on a permanent basis.

5. The Town of Rollinsford with its scheduled 24-hour police protection and its policy of little or no overtime for its regular full-time officers, must rely on permanent part-time officers to maintain 24-hour protection.

6. Sergeant Ducharme, who was in charge of department scheduling, testified that there were 4 shifts open every weekend and he scheduled special officers to fill the schedules and that there were times when specials took the regulars' place when in court, attending training sessions, vacations or absences due to illness.

7. The Selectmen have taken action since the elections and certification of the union to reduce the number of positions in the department and specifically failed to fill vacancies with the Department.

8. This Board finds and reaffirms its finding that the special officers (now termed hourly and irregular employees) to be permanent part-time positions as a factor in police protection on a 24-hour basis for the Town of Rollinsford.

9. The remand attempted to portray the Department in its current configuration changed by specific Selectmen actions rather than considering the facts presented to PELRB at the original hearing.

10. The Rollinsford Police Department was found to have 4 full-time officers and 8 part-time officers considered permanent part-time positions when the original unit determination was made.

11. PELRB in all cases before it, has liberally interpreted part-time permanent employees to permit creation of a bargaining unit in order to afford public employees the right to organize and be represented as specified in 273-A.

12. Selectman Jansen testified at the rehearing that a freeze had been placed on the hiring for the Police Department only subsequent to the certification, and that the freeze might be lifted if the Town prevailed at this hearing.

13. Action taken by the Town subsequent to the original certification, appear to have been taken for the specific purpose of configuring the Police Department so that it would not now qualify as meeting the minimum requirements for certification.

14. Actions taken by the Town subsequent to certification has been directed toward change in the terminology of position identification, instituted by a freeze on hiring, in prohibiting the Chief of Police from filling vacant positions in order that a unit would not qualify for certification. These actions would result in failure to meet the 10 minimum required by 273-A.

15. One Officer, Cobban, who had left the Rollinsford Police Department and who wanted to become a permanent part-time special, whose record was unblemished, was advised he would not be considered.

16. PELRB affirms the right of a public employer to determine organization, staff of a police department but to take actions to discourage such organization after certification, borders on interference with employee rights granted under 273-A.

17. The standard operating procedure for the Police Department adopted in November of 1985 states "All part-time officers are required to work one regular duty patrol shift in a calendar month." "If an officer does not fulfill this requirement within six weeks, he will be considered inactive within the Department."

18. In determining the part-time officers eligibility for the bargaining unit, PELRB found part-time officers had to meet certain employment requirements on a regular scheduled basis and did in fact, more than meet the minimum.

19. The Town of Rollinsford is dependent upon part-time officers, utilized on a permanent basis for staffing its police department.

20. The Town's actions since the original hearing, in use of terminology, i.e., hourly and irregular employment, and freeze on filling vacancies only in the Police Department and not other departments, does not warrant a change in the original decision.

21. PELRB finds part-time positions filled from a roster of qualified police officers on a regular systematic basis, meets the test of part-time permanent employees.

ORDER

PELRB reaffirms its original decision and ORDERS the Town of Rollinsford to negotiate with the exclusive representative for wages, conditions of employment and the settlement of grievances.

Signed this 20th day of June, 1989.

EDWARD J. HASELTINE, CHAIRMAN

By unanimous vote. Chairman Edward J. Haseltine presiding. Present and voting: James Anderson, Seymour Osman. Also present was Evelyn C. LeBrun, Executive Director.

Appealed and Summarily Affirmed - 11/17/89.