



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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GILMANTON TOWN EMPLOYEES UNIT :

Petitioner :

v. :

TOWN OF GILMANTON, NEW HAMPSHIRE :

Respondent :

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CASE NO. M-0629

DECISION NO. 90-92

#### APPEARANCES

##### Representing the Gilmanton Town Employees Unit:

Vincent Baiocchetti, Police Officer

##### Representing the Town of Gilmanton:

Walter Mitchell, Esq., Counsel

##### Also in attendance:

Edward Budroe, Town of Gilmanton  
Maurice R. Saluran, Town of Gilmanton  
Judy Price, Town of Gilmanton  
Susan M. Roberts, Town of Gilmanton  
Henry Page, Selectman  
Bruce G. Marriott, Selectman  
David Russell, Selectman

#### BACKGROUND

On March 29, 1990, the Gilmanton Town Employees Unit (Unit) by its representative, Vincent A. Baiocchetti, petitioned for certification of a bargaining unit consisting of employees in the Police Department (4), Highway Department (2), Fire Department (1), Administrative Department (1), Janitorial (1) and Dump Attendant (1).

On May 8, 1990, the Unit representative petitioned to amend the original petition by adding one (1) full-time Highway Department employee and three (3) part-time police officers. The amendment is hereby granted.

The Board of Selectmen, through its Counsel, Walter Mitchell, Esq., took exception to the petition as filed stating that the proposed unit did not meet the requirements of RSA 273-A as the employees did not share the same community of interest; i.e.,

- (a) they are from six separate and distinct categories of employment;
- (b) are not in the same related historic craft or profession;

- (c) work under substantially different conditions of employment;
- (d) the full-time police officers and the part-time clerk are headquartered in the old Town Hall and paid on a different wage scale and enjoy different benefits.
- (e) the full-time fireman/EMT ambulance attendant merits exclusion from the unit on the basis that the fire department is a private non-profit corporation and not part of the Town government, is manned by the Fire Chief and one full-time firefighter who is also paid on a different wage scale;
- (f) the full-time Highway Department employees are stationed at a different location receiving different benefits and paid at an hourly rate of pay.
- (g) the three (3) secretaries in the Selectmen's office are also located at a different location, two secretaries who work a total of 30 hours per week and one secretary working 10 hours per week. One of the secretaries is the administrative assistant to the Board of Selectmen and should be excluded as confidential and also on the basis of supervisory responsibilities over the other two secretaries.
- (h) the part-time clerk (janitor) should be excluded as he works on an irregular schedule.
- (i) the part-time dump attendant should also be excluded as he works but three (3) days a week, paid at a different rate of pay and receives no benefits.

He added that the gross disparity between the various organizational units would affect the efficiency of government operation; the employees lacked the self-felt community of interest and if granted could create a potential division of loyalty between the public employer, Town of Gilmanton, and the proposed exclusive representative for the employees.

A unit determination hearing was scheduled and held in the Board's office in Concord on July 3, 1990 with all parties represented.

Testimony from the petitioner evidenced that an attempt had been made to secure approval from the Board of Selectmen on the composition of the bargaining unit, without success.

Counsel for the Town further argued the position taken in the town's response and objected to the petition. Chairman of the Selectmen, Henry Page testified on the hiring and firing policy, responsibilities of Selectmen, the Town policy with respect to employees benefits and the separate locations of employment within the Town.

The Administrative Assistant in testimony stated there had been no change in her job duties with the title change from secretary to Administrative Assistant.

The Chief of Police indicated his reliance on special officers to man the department during the summer months, vacations, illnesses, etc...

The Town's written personnel plan and certain stated operating procedures of the Police Department were offered in evidence.

The Road Agent offered testimony on the operations of his department and the lack of interaction with other town departments.

#### FINDINGS OF FACT

After considering the oral testimony and written exhibits offered, the Board makes the following findings in substitution for the requests:

1. The parties agree to the exclusion of the Administrative Assistant to the Selectmen on the basis of its confidential relationship to the Public Employer.
2. The special Police Officers (signers of the petition) who are employed on a regular part-time basis qualify for inclusion in the unit. (See PELRB decision #88-52 (Rollinsford) and Supreme Court Case #89-305)
3. All employees in the petitioned unit are employees of the Town of Gilmanton. While some employees are paid on different scales, work different schedules, and receive different benefits, salary and benefits schedules do not show a lack of community of interest among all town employees.
4. The petition offered in evidence, "The Personnel Plan" for the Town of Gilmanton which clearly states; "it is to establish policies and procedures to ensure insofar as possible, uniform treatment and administration of personnel employed by the Town of Gilmanton" which substantiate our conclusion that even though employment is performed at various locations, they are considered as a group for administrative purposes.
5. The intent of the legislative action in enacting 273-A is to provide for representation of public employees by permitting bargaining units to be certified and negotiate collectively. PELRB has consistently held that part-time employees utilized on a regular basis to man public employer functions can be counted toward establishing the minimum requirement of 10 employees to form a bargaining unit (273-A:8 (d)) and so holds in this case.
6. The Town's reliance on the varying method of wage payment, hourly or salaried and benefits as exclusionary is not supported by the evidence nor by previous rulings of this Board. PELRB has ruled in several cases that a bargaining unit composition can cross craft lines see Town of Ossipee, Case No. A-0330 and Town of Pelham A-0520.

7. The employees in the petitioned unit do meet the community of interest, they are employed by the same public employer, are governed by one personnel policy applicable to all, and that all final supervision of town employees is vested with the Board of Selectmen.
8. The petition meets the requirements under 273-A:10.

ORDER

The petition for certification is hereby GRANTED. A bargaining unit is hereby created composed of all Full-Time and Part-time Police Officers, Police Clerk, Firefighter/EMT Ambulance Attendant, Secretaries, Full-time/Part-time Highway Department Employees and Dump attendant.

Excluded from the unit, Fire Chief, Police Chief and the Administrative Assistant to the Selectmen.

An election to be held by PELRB under RSA 273-A and the Board's Rules and Regulations will be held as expeditiously as possible.

Signed this 14th day of September, 1990.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present, Executive Director, Evelyn C. LeBrun.