



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF  
NEW HAMPSHIRE

Complainant

v.

CITY OF BERLIN

Respondent

CASE NO. M-0693

DECISION NO. 94-02

### APPEARANCES

#### Representing City of Berlin:

Robert R. Tawney, Negotiator

#### Representing Teamsters Local 633 of NH:

Thomas D. Noonan, Business Agent

#### Also appearing:

Mitchell A. Berkowitz, Berlin City Manager

Aline Boucher, Teamsters Local 633 of NH

Paul E. Fortier, Teamsters Local 633 of NH

### BACKGROUND

A petition for certification for a twelve member supervisory bargaining unit in the City of Berlin was filed by Teamsters Local 633 (Union) on November 18, 1993. The City of Berlin (City) filed a response excepting the position of Comptroller/Tax Collector on the basis of confidentiality on December 3, 1993. A hearing on this matter was held before the undersigned hearing officer on January 11, 1994. At that hearing, it was stipulated that no dispute existed as to the inclusion of eleven other positions. Also, it was agreed that the proper title for the Waste Water Supervisor position was Chief Operator and Superintendent.

FINDINGS OF FACT

1. The City of Berlin is a public employer within the meaning of RSA 273-A:1 X.
2. A bargaining unit consisting of twelve positions is requested by Teamsters Local 633. The uncontested positions include Health Officer, City Clerk, Chief Assessor, Welfare Administrator, City Engineer, Fire Chief, Recreation Director, Public Works Director, Development Director, Chief Operator and Superintendent and Head Librarian. The position of City Manager has been excluded because of its supervisory nature and the City requests that the position of Comptroller/Tax Collector also be excluded because of the reliance the City Manager places on that position in budgeting, personnel and labor relations matters.
3. Aline Boucher has been employed by the City of Berlin for thirty-four years. She has held the position of Comptroller for twenty-three years and that of Tax Collector for eleven years. In those positions, she deals with department heads, such as the Fire Chief, and with the City Manager in the preparation of budgets and personnel matters, such as insurance. She is responsible for collecting all taxes, managing benefit programs, such as the retirement fund, and supervising five full-time and one part-time employee. She has never been part of the negotiations for contracts for the six other unions which operate within city government but she has prepared the City Manager's figures and has drafted proposals for the City Manager which were used in those negotiations.
4. She considers the information she gives the City Manager for negotiation purposes to be confidential. If she were to become a part of a bargaining unit, she said her loyalty in such matters would remain unchanged. She does keep personnel files in the Payroll Department since there is no separate Personnel Department. She considers these files to be confidential and releases these files only to those authorized by the the City Manager. When personnel matters such as layoffs have been discussed, the Comptroller/Tax Collector has been consulted for her opinion.
5. Mitchell A. Berkowitz has been Berlin's City Manager since December of 1981. Presently,

there are bargaining units for the Public Works, Water Works, Recreation, Fire and Police Departments as well as a unit for professional employees. When negotiations occur, Mr. Berkowitz is a member of the team is generally appointed chief spokesperson. He calls on the Comptroller/Tax Collector frequently for delicate confidential information and feels the City's position would be diminished if the position in question were included in the proposed bargaining unit. Ms. Boucher is frequently consulted as to past personnel decisions and is relied on because of her knowledge and experience. Mr. Berkowitz believes that he would continue this reliance on this position should Ms. Boucher leave government and a successor be hired.

6. There is a position of Confidential Secretary within city government. Mr. Berkowitz calls on this position to type confidential matters but not to join in the decision-making process. It is with the Comptroller/Tax Collector that confidential planning discussions are held and from whom the City Manager expects feed back. The Confidential Secretary types the results of such meetings.
7. The City Manager reports to the Mayor and City Council who make overall policy. Personnel matters are usually discussed in non-public session. When a general policy is adopted, it is adopted, it is up to the City Manager to develop the details of its implementation. His prime consultative resource would be the Comptroller/Tax Collector in such a situation.

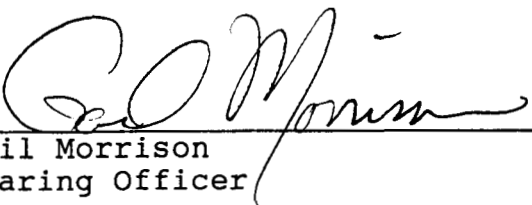
#### DECISION AND ORDER

RSA 273-A:1 IX (c) excludes from the definition of public employee those positions which are confidential to the public employer. While the job description for the Comptroller/Tax Collector makes it clear that this position is to assist the City Manager, it does not address the reality of that position which has developed over the years. The Comptroller/Tax Collector is in daily contact with the City Manager and provides him information for labor relations negotiations. This position is a confidential position and so must be excluded from the proposed bargaining unit. To do otherwise would be to hinder effective labor negotiations. Appeal of the City of Laconia 135 N.H. 421, 424 and 425.

The proposed bargaining unit shall consist of the eleven positions listed in Finding No. 2, above.

So ordered.

Signed this 24th day of January, 1994.

  
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Gail Morrison  
Hearing Officer