



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

v.

TOWN OF PEMBROKE
POLICE DEPARTMENT

Respondent

CASE NO. M-0695

DECISION NO. 94-39

APPEARANCES

Representing Teamsters Local 633 of NH:

Thomas D. Noonan, Business Agent

Representing Town of Pembroke:

Robert R. Tawney

Also appearing:

Arthur Bettez, Monitor
Michael Crockwell, Pembroke Police Department
David L. Stack, Town of Pembroke
John B. Goff, Town of Pembroke
Thomas F. Iverson, Jr., Town of Pembroke
Steve Gubitosi

BACKGROUND

Teamsters Local 633 filed a petition for certification of a twelve member bargaining unit within the Pembroke Police Department on December 22, 1993. The Town of Pembroke responded on January 6, 1994 with objections to the inclusion of five positions: lieutenant (1), sergeant (2), secretary (1) and part-time police

officer (1). The matter was heard on March 22, 1994 at which time the petition was amended to request a unit of full-time police officers (5), part-time police officers (2), corporal (1), secretary (1) and sergeants (2).

FINDINGS OF FACT

1. The Town of Pembroke is a public employer within the meaning of RSA 273-A:1 X. It employs police officers and other personnel to operate the Pembroke Police Department.
2. The Town objects to the formation of the bargaining unit proposed by Teamsters Local 633 by challenging the inclusion of five positions on various grounds and saying that the remaining seven positions are insufficient since RSA 273-A:8 I requires a minimum of ten employees for certification of a bargaining unit.
3. Steve Gubitosi testified that he has been a sergeant with the Pembroke Police Department for five years. He is a supervisor in the sense that he provides leadership to patrolmen but he does not have the power to suspend or discharge a patrolmen for an infraction. He would make a recommendation to the lieutenant regarding discipline. The matter would then be referred to the chief. He does have authority to relieve a police officer from duty if he is unfit to serve for reasons such as alcohol consumption. He gives input into evaluations but the lieutenant writes the final evaluation which is forwarded to the chief.
4. Sergeant Gubitosi schedules full-time and part-time patrolmen and has authority to call in extra assistance if short staffed or if the situation requires additional personnel. If time allows, Chief Iverson prefers to be consulted when additional officers are to be called in.
5. Chief Thomas Iverson stated that the sergeants provide data for the budget and have authority to make decisions necessary to the operation of the department in the absence of the lieutenant and the chief.
6. There are two part-time officer positions which are scheduled for weekends. Only one position is presently being filled since the person who filled the second part-time position is recovering from a

motorcycle accident. Each part-time employee is scheduled for one eight hour shift over the weekend. The part-time employee finds a replacement if he is unable to take the assigned shift.

7. The secretary provides assistance to the chief and other members of the department. When Sergeant Gubitosi has reports of interviews which amount to more than one page, he utilizes the secretary's services. The secretary is not a uniformed or sworn member of the department and does not work holidays but is paid for them. Chief Iverson considers her a confidential employee since she does his typing. She answers calls at the counter and is not privy to discussions between the lieutenant and Chief Iverson. There is presently no bargaining unit in operation and so no labor relations discussions or correspondence occur at the Pembroke Police Department.

DECISION AND ORDER

RSA 273-A:8 II forbids the inclusion of supervisors whose authority includes "the significant exercise of discretion" within the same bargaining unit as those whom they supervise. University System of New Hampshire v. State of New Hampshire, 117, N.H. 96 at 102. (1977) It is expected that there will be conflict between supervisors and the supervised because of differences in duties and relationships. Appeal of East Derry Fire Precinct, 137 N.H. 607, 610. (1993) In East Derry Fire Precinct, the court named three indicators of supervisory authority: the authority to evaluate, the authority to discipline and the limits of the supervisory role. Id. The sergeants in the present case do not perform supervisory roles analogous to those officers in the cited case but serve as working supervisors who share a community of interest with the patrol officers whom they supervise.

The part-time officers are found to be public employees as defined by RSA 273-A:1 IX because they are regularly scheduled employees and not temporary, probationary or exclusively "on call" employees who are excluded from the statutory definition of public employee.

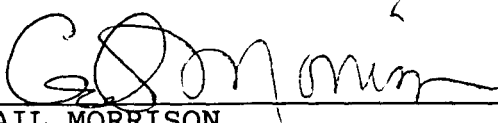
The secretary position has not been shown confidential for the purposes of Chapter 273-A. Though Chief Iverson sees her as confidential because she does his typing and performs other secretarial duties for him, there was no mention in testimony of the secretary being privy to labor relations matters and sensitive

personnel policy matters and such duties will not be presumed. Appeal of City of Laconia, 135 N.H. 421. (1992) As yet, there is no bargaining unit in operation. Should it prove necessary, the question of a confidential exclusion may be reviewed at a later date.

There are a sufficient number of employees for the certification of a bargaining unit as requested by Teamsters Local 633. The unit shall consist of 5 full-time police officers, 2 part-time police officers, the corporal, 1 secretary and 2 sergeants.

So ordered.

Signed this 25th day of April, 1994.



GAIL MORRISON
Hearing Officer