



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL UNION, UAW	:	
	:	
Petitioner	:	
	:	
and	:	CASE NO. M-0702
	:	
TOWN OF MERRIMACK	:	DECISION NO. 94-65
	:	
Respondent	:	
	:	

APPEARANCES

Representing Town of Merrimack:

Heather M. Burns, Esq.

Representing International Union, UAW:

Jermiah W. Hurley, Representative

Also appearing:

Richard Borden, Town Manager
Cindy McGuire, Self

BACKGROUND

International Union, United Auto Workers filed a petition for certification of a bargaining unit within the town offices of Merrimack on March 28, 1994. The Town of Merrimack filed its answer on April 11, 1994 in which it objected to the inclusion of numerous positions. The matter was heard by the undersigned hearing officer on May 17, 1994. At that time, the parties had reached agreement to include 25 positions while 8 positions remained in dispute. The parties stipulated to the inclusion of the following positions: clerk typist/dispatcher in the highway department (1), dispatchers (5), assistant building inspector (1), account clerk II (5), animal control officer (1), clerk typist II (6), office managers (3), secretaries (3). The eight positions in contest are as follows: account clerk II (supervisory, 1), account clerk/programmer II (position eliminated, 1), animal control

officer (part-time, 1), clerk typist (part-time, 1), clerk typist II (part-time, 1), office manager (confidential employee in the police department, 1), park and recreation director (part-time, 1), purchasing agent and welfare director (supervisory, 1), secretary (confidential, 1).

FINDINGS OF FACT

1. The Town of Merrimack (Town) is a "public employer" within the meaning of RSA 273-A:1 X.
2. International Union, United Auto Workers (Union) has proposed a thirty-three position bargaining unit within the town offices to consist of the above named positions.
3. The Town objects to the inclusion of an account clerk II position held by a person who was recently appointed to be deputy town clerk and tax collector. In this combined role, the position supervises, disciplines and assigns work to other account clerks II and takes over the day to day operation of the town offices in the absence of the town clerk/tax collector. The appointed position was previously held by another worker who was an account clerk II but acted as an office manager. That person is now the town clerk/tax collector. The position in question is paid as an account clerk II but the employee who holds that position receives an additional stipend because of her duties as an appointee.
4. The part-time animal control officer position works few or no set hours. The position is on call whenever the full-time animal control officer is unavailable. This position receives no benefits but is on the payroll most weeks. Town Manager Richard Borden was unable to state that this position works no regular hours but, at most, this position is regularly scheduled to work every other weekend. This position has no work station at the town offices but operates from a vehicle.
5. The position of clerk typist in the police department is a part-time position. Variable hours are scheduled on a weekly or daily basis as needed. No benefits accrue to this position. The position is held by one person who does routine office work and is paid on an hourly basis. Mr. Borden was unable to respond when asked whether or not the position was assigned some regular hours each week.
6. The clerk typist II who works for the Merrimack Conservation Commission performs most tasks out of her home. The Town provided a typewriter for her home

use. This position attends commission meetings to take minutes at the regularly scheduled hour on Wednesday evenings, is assigned a desk and uses the office equipment such as the copying machine as well as stenographic services at the Merrimack Town Hall. She bills the Town for her hours of work which average eight or nine hours a week and receives no benefits.

7. Mr. Borden testified that the office manager within the Merrimack Police Department serves in the role of executive secretary to the chief. He stated that there is a union within the police department and that this position performs typing and related tasks dealing with labor relations as well as criminal matters, both of which are confidential. He stated that the police department handles more sensitive material than does the fire or highway departments. The position of office manager within the police department is different from other office manager positions in that way.
8. One secretarial position is responsible for typing Mr. Borden's work. This position is assigned the typing of all labor and personnel matters and acts as Mr. Borden's executive secretary though a wage freeze has prevented an upgrading.
9. The Merrimack Parks and Recreation Department retains a facilities coordinator who works part-time during the winter but works full-time during the summer. This position coordinates the activities of the department and gives routine assignments of work to the work crew foreman. This position works regular hours and is assigned an office. No benefits are provided this position.
10. Cynthia McGuire testified that she has held the combined position of welfare director/purchasing administrator for five years. She is paid on an hourly basis for forty hours of work and receives time and a half when she works overtime. Weekly meetings are held with department heads but she does not attend these meetings. She receives no special benefits other than benefits available to rank and file staff. She reports directly to Richard Borden, Town Manager in the role of welfare director. This position makes decisions regarding the distribution of town welfare funds. In the position of purchasing administrator, Ms. McGuire reports to Robert Levan. This position has authority to make routine purchases such as office supplies but items costing in excess of one thousand dollars (\$1,000.00) require the

signature of her supervisor. This combined position has discretion regarding the expenditure of money, but there is no discretion exercised in personnel matters since no employees report to her. She does not supervise fellow staff members in either position.

11. Prior to the taking of evidence, it was stipulated that one position, that of assessor, had been eliminated without protest. The request for inclusion was therefore withdrawn.
12. The Town objects to the inclusion of the position of account clerk/programmer II because the combined position has been eliminated. The circumstances were the subject of an unfair labor practice charge which resulted in the PELRB's recent decision, International Union, UAW v. Town of Merrimack, Decision No. 94-49 (June 14, 1994).

DECISION AND ORDER

In accordance with Finding No. 12, the job title as amended stands. The programmer II designation is deleted and the single position of account clerk is now counted among the six account clerk II positions not challenged as bargaining unit members.

The combined position of account clerk II/deputy town clerk and tax collector is not acceptable as a member of the bargaining unit because of the supervisory nature of the role of the deputy town clerk and tax collector over office staff. RSA 273-A:8 II forbids supervisory employees from belonging to same bargaining unit as those supervised. Also, the deputy town clerk and tax collector is an appointed position, RSA 41:18, and appointees are excluded from the definition of public employee pursuant to RSA 273-A:1 IX (b).

The part-time animal control officer position works few or no regular hours and is on call at his home to respond by vehicle when the full-time animal control officer is not on duty. With no work station at the town offices, an important circumstance of employment shared by other members of the proposed bargaining unit is lacking. The community of interest is diminished so affecting the goal of joint negotiations. University System of New Hampshire v. State of New Hampshire, 117 N.H. 96, 99-100 (1977). It is the irregular, on call employee, who is definitionally excluded by RSA 273-A:1 IX (d). It is the position which shares little in common with other positions within the bargaining unit which must be excluded pursuant to RSA 273-A:8. Therefore, the part-time animal control officer is excluded.

Also, challenged as a part-time employee is the clerk typist

position within the Merrimack Police Department. Similar to the above discussed part-time position, there was no testimony that this position is not scheduled for some number of regular hours. However, the one individual who fills this part-time position reports to a supervisor in common with other employees and works some number of hours each week and so appears on every payroll. Hours are accumulated and paid on a weekly basis for work performed along with other staff at the Town offices. As such, there is a sufficient community of interest with other regular part-time and full-time employees to bring this position into the bargaining unit with other office staff and Town workers.

The clerk typist II who performs work for the conservation commission works a small number of hours but on a regular basis at the Town offices and at her home. This position is also paid by the hour, receives no benefits and is regularly on the payroll. Testimony from Cindy McGuire makes clear that this position is seen as part of the team which works in the Town offices. This position is included in the bargaining unit.

The position of office manager within the Merrimack Police Department is excluded because of the confidential nature of work performed. In the role as executive secretary, this position deals with labor relations matters as they arise during negotiations. The potential for conflict is great and inclusion of the position would likely be detrimental to the efficient operations of the Department. Appeal of Laconia, 135 N.H. 421, 424 (1992).

The one position of secretary requested excluded is best excluded as confidential to the Town's executives, Mr. Borden and the selectmen. The position performs a variety of tasks which includes typing sensitive personnel and union negotiation matters. The duties of this position imply a confidential relationship to the public employer such that the position may not be included in the bargaining unit. RSA 273-A:1 IX (c).

The parks and recreation facilities coordinator is employed year round with hours that vary seasonally. The position is regular and not seasonal. Also, the Town has questioned inclusion since the position supervises a group of employees. Testimony revealed that this position assigns projects to a work crew directed by a foreman. Nothing suggests that the position has authority to hire, fire, evaluate or discipline the work crew or foreman which would represent significant supervisory discretion sufficient to give reason to exclude the position from the bargaining unit. University of New Hampshire v. State of New Hampshire, 117 N.H. 96, 102 (1977).

The position of welfare director and purchasing administrator is included in the bargaining unit. Although the combined position is nearly autonomous, and there is an exercise of discretion regarding the expenditure of money, this position does not exercise

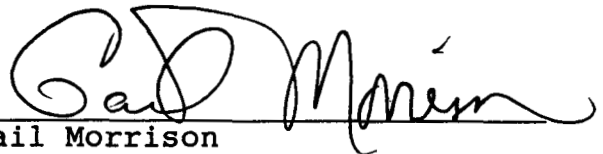
any degree of supervisory discretion which would provide reason to exclude it from the bargaining unit. The position is not included in management meetings. Inquiry elicited evidence of a strong self-felt community of interest with the potential bargaining unit. Appeal of East Derry Fire Precinct, 137 N.H. 607, 610 (1993).

Excluded through this decision are the positions of part-time animal control officer (1), secretary (1), office manager (1) and the combined position, account clerk/programmer II (1). A thirty (30) position bargaining unit is hereby established to consist of:

clerk typist dispatcher in the highway department (1), dispatchers (5), assistant building inspector (1), account clerk II (6), clerk typist II (6), office manager (3), secretary (3), welfare director/purchasing administrator (1), clerk typist in the police department (1), clerk typist II with the conservation commission (1), park and recreation facilities coordinator (1), animal control officer (1).

So ordered

Signed this 15th day of July, 1994.



Gail Morrison
Hearing Officer