



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF :
NEW HAMPSHIRE :
Complainant :
v. : CASE NO. M-0727
TOWN OF HOOKSETT : DECISION NO. 96-051
Respondent :
:

APPEARANCES

Representing Teamsters Local 633 of NH:

Thomas D. Noonan, Business Agent

Representing Town of Hooksett:

Renny Perry

Also appearing:

Elizabeth Dinwoodie, Hooksett
Gerald Cottrell, Hooksett
Kempton Holt, Hooksett
Jennifer Emeney, Hooksett
Walter E. Norris, Hooksett
Raymond O'Brien, Hooksett

BACKGROUND

On March 5, 1996, Teamsters Local 633 (Union) filed a petition for certification of a bargaining unit to consist of fourteen (14) department head level positions within Hooksett (Town) government. The positions were that of tax collector,

fire chief, deputy fire chief, welfare director, building inspector, assessing director, youth services director, finance director, park and recreation director, assistant administrator, secretary for public works, transfer station superintendent, transfer station office manager and heavy equipment operator at the transfer station. On March 20, 1996, the Town filed exceptions to the inclusion of six positions: tax collector, deputy fire chief, assistant administrator, transfer station office manager, transfer station heavy equipment operator and public works secretary. Also, the Town urges inclusion of the manager of the highway department since it is a department head level position. The matter was heard before the undersigned hearing officer on April 29, 1996.

FINDINGS OF FACT

1. The Town of Hooksett is a "public employer" within the meaning of RSA 273-A:1 X.
2. Article 1 of the Hooksett Town Charter describes a town form of government with administrative duties delegated to a town administrator and legislative duties vested in a town council. Among the positions appointed by the town council is that of tax collector. This position is combined with that of the town clerk, an elected position. See Town Exhibit #1.
3. Department heads are hired by the town administrator with final authority in the town council. Department heads are accountable to the town administrator who also has powers to terminate employees. Department heads generally exercise significant discretion having authority to hire new employees with advise and consent of the town administrator. They may evaluate, discipline, suspend or discharge employees. Personnel Plan Article 16.4.1. Testimony from Mr. Cottrell, the town administrator, was that, in practice, department heads make recommendations to him before terminations occur.
4. The position of assistant administrator is not addressed in the Town Charter but the position has existed for approximately seven years. The position assists in administering town matters, has research and other duties exclusive to this position, and acts in the stead of the town administrator on the rare occasion of his absence. Mr. Cottrell testified that the assistant administrator has limited authority over

matters of hiring/firing, suspension or discipline in his absence. The assistant administrator, Elizabeth Dinwoodie, testified that she does not feel she has significant authority and has never exercised such authority. She has been instructed to refrain from taking action that can wait for the return of the town administrator.

5. Elizabeth Dinwoodie was hired into the position of secretary to the town council seven years ago but her job was changed within weeks of her hire. The town administrator and the assistant administrator are the only salaried positions within the administration department. The assistant administrator is paid in the same salary range as the heads of smaller departments. Testimony from her supervisor, Mr. Cottrell, was that this position has access to documents used in union negotiations for existing units. When asked if the town council employs a secretary capable of managing the correspondence which might be generated were a new bargaining unit to be certified, Mr. Cottrell stated that the town council has a full time secretary. The job description in evidence describes this position of assistant administrator as the town administrator's "right hand person". (Joint #14)
6. The superintendent of the transfer station has been in charge of the landfill for about two decades. He operates equipment on a daily basis, oversees all aspects the transfer station and considers himself a department head. The office manager and the heavy equipment operator report directly to him. The office manager supervises operation in the absence of the superintendent but does not have the authority to discipline or recommend hiring or firing. The heavy equipment operator does not share the authority of the superintendent or the office manager.
7. Based on the testimony of Town Administrator Cottrell, the deputy fire chief stands in for his department head, the fire chief, and also has special administrative duties assigned to him alone. The deputy chief and the chief are the only fire department employees on salary. The deputy has policy making responsibilities along with the chief and oversees acceptance and implementation of department rules.
8. Job descriptions received in evidence included that of

public works supervisor, also referred to as highway department manager. This position is a department head level position which is responsible to "interact and coordinate with other department heads for overall management effectiveness." The description of this position's duties, as well as the pay level assigned are those of an upper level department head. The supervisor is the only salaried position in the eight position department. The position of secretary is the only other highway department position proposed for inclusion in this bargaining unit.

DECISION AND ORDER

RSA 273-A:8 charges the Public Employee Labor Relations Board with determining the composition of public employee bargaining units. The first position to be considered is that of tax collector which is combined with the position of town clerk. As combined, the position is both appointed (tax collector) and elected (town clerk) and so statutorily excluded under RSA 273-A:1 IX (a) and (b). One holding this combined position is not a public employee within the meaning of the statute.

RSA 273-A:8 requires that consideration be given to the principle of community of interest in deciding the composition of a bargaining unit. The secretary who works for the highway department is not a department head and is not salaried. (Town #3). This position appears to have little in common with the middle to upper management positions being proposed for the bargaining unit. For that reason, the position is excluded. Also in the highway department, the Town objects to exclusion of the highway department manager as it is the only department head reporting to the town administrator which is not included in the unit. The Town believes that harmony within town government would be destroyed if this position were excluded. No testimony was taken on reasons for exclusion. The highway department manager is properly within this bargaining unit and shall not be excluded.

The transfer station office manager performs strictly clerical, rather than managerial or supervisory work. The transfer station superintendent exercises significant authority over this position. The office manager is excluded pursuant to RSA 273-A:8 II. The heavy equipment operator is also excluded from this bargaining unit for supervisory reasons and because of a lack of a community of interest with management and supervisory positions.

The deputy fire chief is included in this unit as proposed. The assistant administrator is not. Both positions are second in command in their respective department hierarchies. These positions have much in common with the department head positions. The level of supervision exercised is similar to that of department heads. They are salaried and each has responsibilities exclusive to that position. Additionally, the deputy chief shares with the chief the duty of setting policies. This position shares a community of interest with those to be included in the bargaining unit.

The assistant administrator is excluded under RSA 273-A:1 IX (c) because the position has access to confidential labor relations matters. Though the Town is not without recourse as to labor negotiations correspondence, this position is not strictly a clerical position. The confidential exclusion is reserved for secretaries and others who work closely with decision makers in the labor negotiations process. Testimony was not conclusive but, when considered in relation to the job description provided, the position of assistant administrator must be excluded because the position assists the town administrator in "every aspect of daily operations" and so is privy to materials confidential to the labor negotiation process. (Joint #14). Transferring the typing of negotiations proposals to another position does not render this position not confidential.

A ten member unit is appropriate for certification. The bargaining unit shall consist of the positions of fire department chief, deputy fire chief, welfare director, assessing director, code enforcement officer, youth services director, finance director, parks and recreation director, transfer station supervisor, and highway department manager.

So ordered

Signed this 25th day of June, 1996.



Gail Morrison
Hearing Officer