



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 298/MANCHESTER	:	
PARKS AND RECREATION EMPLOYEES	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. A-0544:53
	:	
CITY OF MANCHESTER	:	DECISION NO. 1998-018
	:	
Respondent	:	

APPEARANCES

Representing AFSCME Local 298:

James C. Anderson, Staff Representative

Representing City of Manchester:

David Hodgen, Chief Negotiator

Also appearing:

- Brian Mitchell, Local 298
- Ronald Ludwig, City of Manchester
- Paul J. Socha, City of Manchester
- Bernard Goudreau, City of Manchester
- Donald Sowa, City of Manchester
- Michael Rockwell, AFSCE, Local 298
- Victor Duhaime, AFSCME, Local 298
- Joseph Martin, AFSCME, Local 298

BACKGROUND

On October 27, 1997, AFSCME Local 298/Manchester Parks and Recreation Employees filed a petition to modify the composition of the existing bargaining unit adding two newly created positions, Parks Utility Supervisor and Recreation Utility Supervisor. The City of Manchester answered with its objections based on the supervisory nature of the positions on November 10, 1997. A hearing was held before the undersigned hearing officer on December 5, 1997. The

hearing was continued and concluded on January 12, 1998. During the course of the hearing, a long standing dispute was raised as to whether members of the clerical staff are in the bargaining unit. A list of agreed to bargaining unit positions was requested on December 5, 1997, and on January 12, 1998. The record of the hearing was closed on January 21, 1998, without the requested evidence following a communication from the City. The below order is to be considered interim in nature. A hearing on the outstanding dispute regarding bargaining unit composition will be scheduled and notice sent to the parties, as it is the Board's mandate to determine "the appropriate bargaining unit." RSA 273-A:8 I.

FINDINGS OF FACT

1. The City of Manchester employs personnel to operate municipal government and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME Local 298 was certified the exclusive bargaining representative for certain employees of the Manchester Department of Parks and Recreation on December 7, 1976.
3. In approximately 1995, the Manchester Parks, Recreation and Cemetery Departments began reorganizing to avoid imminent privatizing of the municipal services the department provides. The Cemetery Department was merged into the Park and Recreation Department. Positions were eliminated, added or modified. According to the 1995 Organizational Chart, (City Exhibit No. 8), there were formerly two Utility Foreman II positions in Parks Maintenance and two of this position in Recreation Maintenance. These labor grade 18 positions are in the bargaining unit.
4. In 1996, the positions of Park Utility Supervisor and Recreation Utility Supervisor were created as non-union positions at labor grade 20. Employees, who were Parks Utility Foreman II and Recreation Utility Foreman II, were promoted into the new positions. There is now one Utility Foreman II position filled in Recreation and none filled in Parks Maintenance. The City asserts that these new positions are non-bargaining unit positions because they are management positions which are supervisory in nature.
5. Job descriptions for the positions of the old Utility Foreman II, and the new Parks Utility Supervisor and Recreation Utility Supervisor are similar. (Associa-

tion Exhibits Nos. 2, 3 and 4). The job descriptions employ many of the same terms and describe many of the same tasks. The same qualifications are needed for all of these positions: high school graduation plus four years of related experience. Added to the Distinguishing Features section of the two Utility Supervisor positions is the follow paragraph:

It is distinguished from other labor supervisory positions in that the incumbent serves as a member of its management team with authority to recommend promotions, transfers and discipline. The incumbent also is responsible to actively participate in the development and enforcement of department policies and procedures, budget and labor relations matters.

6. Ronald Ludwig, Director of Parks, Recreation and Cemetery Department for four years, described the processes of consolidation and reorganization undertaken during his tenure. He referred to the current organizational chart which was adopted on January 3, 1996. Donald Sowa and Bernard Goudreau became the new Utility Supervisors promoted in February, 1997. They are referred to as Utility Foremen III on the current organizational chart (City Exhibit #9). Though Donald Sowa urged an acquaintance to apply for a position and has recommended his hiring as an employee, neither new position has the authority to hire, fire or discipline. Mr. Ludwig indicated that the new supervisors may verbally discipline and make recommendations to him if stronger discipline is needed.
7. Paul Socha, Parks, Recreation and Cemetery Supervisor since December 10, 1996, recalls observing employees outside a department building at an early hour. He spoke to Donald Sowa regarding these employees who were arriving for work too early and Sowa handled the problem. Socha gives instructions to the Utility Supervisors who hand out assignments to workers for overtime and coverage for sick time. He checks on the two Utility Supervisors daily. In turn, and they have constant contact with the workers.
8. Victor Duhaime, Utility Foreman II at JFK Coliseum, testified that the Utility Foreman II has always assigned the day's tasks to workers at the City's two ice arenas. Duhaime continues to do so at the JFK Coliseum. At the West Side Ice Arena, the former

Utility Foreman II, now the Parks Utility Supervisor, continues to assign work each morning despite his promotion. Duhaime reviewed the job description for Parks Utility Supervisor and stated that, with some exceptions, the document described the work he performs in the course of his employment. He reports to former Utility Foreman II, Bernard Goudreau, who is now the Recreation Utility Supervisor.

9. Bernard Goudreau, Recreation Utility Supervisor, oversees both ice arena operations. He testified that his job has changed considerably since his promotion to Park Utility Supervisor. He is responsible for schedules at three municipal facilities: Gill Stadium, West Side Arena and JFK Coliseum. Hours change daily depending on bookings. On advice of his supervisor, he seeks bids and searches out the best prices on equipment. He collects the money taken in at each facility, tallies, logs and turns in money. Handling money and making up schedules were formerly done by Ron Ludwig. Goudreau recalls having to call in a replacement for a worker who was ill with pneumonia on Christmas Eve. He feels he needs management to support his decisions and that he would have difficulty deciding against another member if he were a member of the bargaining unit.
10. Donald Sowa, Park Utility Supervisor, finds he has greater responsibility than he did as a Utility Foreman II. He now has 18 people in several crews working for him. Previously, he oversaw one crew of between two and five workers. Now, he spends time going from crew to crew checking on progress. He feels it would be difficult to reprimand workers if he were in the bargaining unit with those he supervises. Previously, he would work along side the crew if a worker did not appear to work. Now, he steps in to plow or perform work beside crew members only when a correction is needed but not in cases of absence as he did when he was a foreman.
11. The reorganization chart for fiscal year 1997 shows the position of Utility Foreman II in place in both the Park and Cemetery structure and the Recreation structure although the position is not filled in Recreation (City Exhibit No. 9). There is a Deputy Director, an Accountant and, in the two branches, supervisors, who are at labor grade 27 shown over the positions of Park Utility Supervisor and Recreation Utility Supervisor (designated Foremen III).

DECISION AND ORDER

RSA 273-A:8 places questions of bargaining unit determination, including modifications, within the authority of the PELRB. Rule PUB 302.05 describes when a bargaining unit modification may be considered following a change in the composition of the bargaining unit.

In the present case, the City of Manchester has exercised its managerial prerogative to reorganize its Parks, Recreation and Cemetery Department adding a new level of administration. The City has created two positions, labeled them supervisory positions and excluded them from the bargaining unit. The fact that the City has so labeled the two positions is not dispositive of the question of bargaining unit inclusion. The nature of the positions must be examined.

Some of the work assigned the two new supervisory positions is bargaining unit work previously done by Utility Foremen II, two positions of which remain in the bargaining unit. Some of the tasks now performed by the two Utility Supervisors were done by upper level supervisors. The question to be decided is, do these amalgamated positions exercise significant supervisory discretion, RSA 273-A:8 II, which requires they be excluded as the City asserts. Three indicators of a supervisory role are the authority to evaluate, a limited supervisory role, including scheduling and the authority to discipline. *Appeal of East Derry Fire Precinct*, 137 N.H. 607, 610 (1993).

Applying the criteria of *East Derry, Id.*, the documentary evidence varies from the testimony. The job descriptions connote authority to assign work, evaluate and to discipline in the abstract. Testimony of Ronald Ludwig and others showed authority to schedule and assign work. There is a dearth of the remaining two characteristics of authority.

Little was said about evaluations. There was inconclusive testimony that evaluation of part-time, and perhaps seasonal workers, was about to begin. But, if part-time and seasonal positions are bargaining unit positions in this Manchester bargaining unit, there was no testimony that part-time or seasonal workers are supervised by the new Utility Supervisors. No evaluation format was examined and no documents such as job review forms were produced. A year has passed since their hiring and there is nothing substantial to suggest that these new positions are structured to exercise a role in any organized evaluation process or that they have authority to design and administer an evaluative tool on their own. That authority resides elsewhere.

Further, we are told that verbal correction may be issued by the two positions but the one example given is of an upper level supervisor telling a new Utility Supervisor to speak to early arriving workers which he did. No degree of independent authority to discipline or effectively recommend discipline has been shown to exist in the new Utility Supervisors' positions. Further, there has been no change made in the conduct of interviews, for instance, to give these positions a role in the hiring or firing processes. No mention is made of attendance at supervisors' meetings or other ways input may be taken for budget development or policymaking. The abstract supervisory characteristics placed in the job description of Utility Supervisor are not incorporated into the duties of the position.

Taken together, there have been changes in organizational structure of the Manchester Parks, Recreation and Cemetery Department which have given increased responsibility to two individuals who occupy two new positions, originally called Foremen III. The increased responsibility is not increased supervisory discretion that would warrant bargaining unit exclusion. This modification request is granted. Essentially, two Utility Supervisors, who act as Utility Foremen III, replace two Utility Foremen II positions in the bargaining unit.

So ordered.

Signed this 18th day of March, 1998.



Gail C. Morrison
Hearing Officer