



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF  
NEW HAMPSHIRE, SEIU, LOCAL 1984

Petitioner

v.

TOWN OF ASHLAND

Respondent

CASE NO. S-0404

DECISION NO. 1999-012

APPEARANCES

Representing State Employees Association:

Dennis T. Martino, Executive Assistant

Representing Town of Ashland:

Walter Mitchell, Esq.

Also appearing:

Linda P. Pack, Town of Ashland  
Russell Cross, Jr., Town of Ashland  
Donald Marren, Town of Ashland  
Rosemarie McNamara, Town of Ashland  
Terri Donovan, State Employees Association

BACKGROUND

State Employees Association, SEIU, Local 1984, (Association) filed a petition to certify a bargaining unit of employees of the Town of Ashland on November 11, 1998. The Town of Ashland (Town) filed objections to the petition on December 1, 1998. A hearing

was held before the undersigned hearing officer on January 11, 1999. Testimony was taken and the record was closed at the conclusion of the hearing.

The State Employees Association's petition requests the certification of a sixteen member bargaining unit to consist of twelve positions, ten of which are within the Public Works Department and six of which are within the Police Department. The petitioned for bargaining unit consists of the following positions: linesman (1), office manager (1), water/sewer supervisor (1), water/sewer operator (1), secretary (1), equipment operator/laborer (2), mechanic (1), transfer station attendants (2), sergeant (1), administrative sergeant (1), investigator(1) and patrolman (3). The Town has objected to the formation of a bargaining unit that encompasses employees from both departments as it contends that there is no community of interest between Public Works Department and Police Department employees. RSA 273-A:8 II. Second, the Town objected to the inclusion of four positions because of the supervisory nature of each position asserting that those who supervise employees who are bargaining unit members are not eligible for bargaining unit inclusion. RSA 273-A:8 II. The four positions are Police Sergeant, Administrative Sergeant in the Police Department and the Office Manager and the Water/Sewer Supervisor in the Public Works Department. During the hearing, the Town withdrew its objections to the inclusion of the Administrative Sergeant on the latter basis.

#### FINDINGS OF FACT

1. The Town of Ashland employs personnel in the operations of its Police Department and Public Works Department and so is a "public employer" within the meaning of the statute. RSA 273-A:1 X.
2. The Town of Ashland has adopted the Town Manager form of government under which the Town Manager is "... the administration head of all departments...responsible for the efficient administration thereof,....". RSA 37:5 e.g. RSA 37:6 VII (a). Rosemarie McNamara, Town Manager, testified that she has general responsibility for hiring, firing and evaluating personnel. Department heads may impose initial discipline on employees of the Police Department and Public Works Department but

she would be consulted before the discipline finalized. Department heads cannot hire or fire without her consent according to statute.

3. Linda Pack is the Office Manager at the Public Works Department office. She testified that her duties are almost identical to those of the Utilities Clerk/Secretary. The incumbent in the latter position has performed every aspect of the position of Office Manager at one time or another and served as Office Manager when the position was last vacant. According to the job description, the Office Manager is supervised by the Town Manager and the Department Superintendent who, in turn, supervises one position, the Utilities Clerk/Secretary (Association Exhibit No. 3). The Office Manager does not discipline or evaluate this position and could not hire the Clerk's replacement. She provides input to the Superintendent of the Department who is responsible for the yearly evaluation of the Clerk. The Public Works Office is separate from the Town Offices. The Office Manager testified that she coordinates work that comes through the office but does not manage the staff. She and the Utilities Clerk share duties. The Town organizational chart and the job descriptions of Office Manager and Utilities Clerk/Secretary, also known as Utilities Clerk (Senior), are on record. (Association Exhibit Nos. 1,3; Joint Exhibit No. 1).
4. Russell Cross, Jr. testified that he was hired to be the Water and Sewer Supervisor but he does not supervise. The main difference between his job and the Operator's work is that his work is more technical. He works beside the Operator on a day to day basis, and both are under the supervision of the Superintendent who assigns and reviews work. If the Water and Sewer Supervisor notes that the operator needs supervision, he advises the Superintendent. Cross had no part in hiring the Operator but he did monthly evaluations for the Superintendent for a brief period after the Operator's hiring so that the Superintendent could decide whether to retain the new Operator. The Water and Sewer Supervisor is not involved in any regular evaluations. Those evaluations are prepared by the Superintendent and signed by the Superintendent and the

Town Manager. The job description for Water and Sewer Supervisor is in evidence. (Association Exhibit No. 5).

5. Rosemarie McNamara, Town Manager, testified that the Patrol Sergeant performs most of the supervision within the Ashland Police Department because the Chief chooses not to do so. The Patrol Sergeant exercises discipline after he confers with the Chief. The Patrol Sergeant evaluates the work of all officers with the exception of one, the Administrative Sergeant.
6. The Town Manager, averred that the Ashland Police Department has different hiring standards from other departments of the municipal government. Training for officers is different from training for other positions. The Police Department is in the Town Hall but is physically separated from other Town offices for security reasons. All police officers are uniformed and operate on a different schedule from other employees. They are scheduled on a three week rotation in order to provide twenty-four hour coverage. Only the Police Department is open twenty-four hours per day, seven days a week. Police officers receive different pay and benefits from other employees.
7. The 1996 and 1997 job descriptions for the position of Police Sergeant, who is the Patrol Sergeant, are in evidence. (Association Exhibit No. 4 and Joint Exhibit No. 1).

#### DECISION AND ORDER

The legislature has delegated to the Public Employee Labor Relations Board authority to determine whether a bargaining unit is to be formed and, if so, the composition of the bargaining unit. RSA 273-A:8. On the question of the supervisory nature of the two municipal employees whose position titles include the terms "manager" and "supervisor," the legislature has said that those with supervisory authority characterized as "involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." RSA 273-A:8 II. However, neither the Office Manager nor the Water and Sewer Supervisor exercise supervisory authority of the kind or to the degree requiring bargaining unit exclusion. Appeal of East Derry

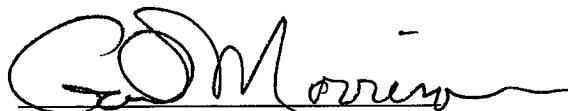
Fire Precinct, 137 NH 607, 610 (1993). The job descriptions supported the incumbents' testimonies that such supervisory authority is exercised by the Superintendent of Public Works and the Town Manager. Their job titles are not an impediment to bargaining unit inclusion. The positions of Water and Sewer Supervisor and Office Manager are eligible for bargaining unit membership.

RSA 273-A:8 mandates that the principle of community of interest be taken into consideration in bargaining unit determination. The sole witness on the matter of the existence of a community of interest between the regular municipal employees and the members of the Police Department was the Town's witness, Town Manager Rosemarie McNamara. She testified to the differences between these two departments of Ashland's Town government, the Public Works Department and the Police Department. There was no testimony offered to counter her observations. The Association presented no evidence to show the existence of a community of interest. Therefore, no conclusion is possible save that the Association has failed to prove that members of the Ashland Police Department and members of the Public Works Department have a sufficient community of interest so that they can reasonably jointly bargain terms and conditions of employment with their common employer.

The ten positions within the Public Works Department for which the Association has petitioned are sufficient for the formation of a bargaining unit. The bargaining unit for the Ashland Public Works Department employees shall consist of the following positions: Linesman (1), Office Manager (1), Water/Sewer Supervisor (1), Water/Sewer Operator (1), Utilities Clerk/Secretary (1), Equipment Operator/Laborer (2), Mechanic (1) and Transfer Station Attendant (2). Police personnel are excluded for the reasons set forth in the immediately prior paragraph.

So ordered

Signed this 24th of February, 1999.



Gail C. Morrison  
Hearing Officer