

A pre-hearing conference was held on October 8, 1999. A pre-hearing memorandum was issued on October 12, 1999 and a hearing was held on October 27, 1999. The record was held open for the receipt of closing briefs on November 12, 1999. An extension of time was requested by the Town and agreed to by AFSCME. The record was closed with the submission of the Town's brief on November 19, 1999.

FINDINGS OF FACT

1. The Town of Litchfield employs firefighters, office staff and laborers to provide town government services to citizens and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME Council 93, on behalf of Litchfield Town Employees, petitioned for certification as the exclusive bargaining representative for a bargaining unit of thirty-eight (38) employees, two of whom are full-time Fire Department employees and twenty-seven (27) of whom work only when there are fires and/or other emergencies. They also attend regularly scheduled meetings. Considering the excluded management employees, the Chief and two deputies, who are also part-time employees, there are of thirty-two Fire Department employees. The remaining positions proposed for bargaining unit membership are office workers or laborers.
3. Michael Stanhope testified that he was hired by the Town as a part-time firefighter in October, 1989. He began work as a full-time firefighter in 1991. He is scheduled to work Monday through Friday, 8:30 a.m. to 4:30 p.m. He receives benefits including three weeks of vacation, ten paid holidays and ten days of sick leave annually. He is required to carry a pager issued by the Fire Department when he is not on duty. He is not paid for carrying a pager.
4. Part-time firefighters are also issued pagers. They are summoned to fires through the use of pagers. Records are kept and firefighters are paid for the time they are on duty fighting fires. It is expected that regular part-time firefighters will respond if they are able, though some hold full-time jobs elsewhere. (Union Exhibit No. 5)
5. The Town maintains a list of part-time firefighters who are members of the Litchfield Fire Department and this list is reflected in the Member Call Response

Report for 1998. (Joint Exhibit No. 3) This report shows a total of 401 call events in 1998. Twenty-four member firefighters responded to more than forty calls and seven responded to more than one hundred of these calls.

6. Fire Department members are called to provide coverage for the two full-time firefighters when they schedule vacations or are otherwise unavailable. There is a second list of non-member firefighters who are called when the regular part-timers are not available. (Union Exhibit No. 2). They are not considered members of the Litchfield Fire Department. A third list maintained for payroll purposes contains the names from both lists referred to above. (Town Exhibit No. 1). It contains a week by week analysis of the on call hours worked from the first week in January through the last week in August of 1999. Most members on the list received paychecks at least three out of four weeks posted in sample months April and August.
7. Michael Stanhope testified that the Litchfield Fire Department replaces part-time firefighters if they resign. A generic application for employment is completed after which the candidate for the part-time position goes before a hiring board who gives a recommendation to hire or not. New full time and part-time firefighters undergo a six month probationary period and training. Stanhope stated that the Litchfield Fire Department operates six response vehicles when there is a full-blown emergency. The full-time firefighters travel in one vehicle and the remaining vehicles are driven and staffed by part-time firefighters who are alerted to the emergency by pager and respond. Response is mandatory for all.
8. Timothy Kearns has been a part-time firefighter and paramedic employed by Litchfield for fifteen years. The Town requires that he and all part-time and full-time firefighters be certified. The same certification, N.H. Level I Firefighter, is required for full-time and part-time firefighters including the Chief and Lieutenant.
9. Kearns is expected to attend training sessions and meetings. Failure to attend as outlined in Chief Lemire's memorandum of July 14, 1993, (Union Exhibit #3), now replaced by policy, can result in termination. He has never been evaluated, has never been terminated

and has never been asked to re-apply for his position. He considers himself to be a member of the Litchfield Fire Department.

10. Brent Lemire has been the Fire Chief for fifteen years. Chief Lemire testified that the reason the work Litchfield firefighters perform is irregular is because no one knows when the alarm will go off indicating a fire and that the part-timers are necessary to provide effective coverage. Industry standards require two firefighters outside of a burning building before two firefighters can be sent inside. Part-time firefighters are integral to the team of firefighters necessary at the scene of a fire.
11. Keith Makarawicz testified that he has been employed as a part-time Litchfield firefighter since 1992. He is trained as a Firefighter Level 3, EMT and Hazardous Materials Technician. He is employed full-time in another community but is expected to attend Litchfield Fire Department meetings two Wednesdays a month and was disciplined when he failed to attend meetings.
12. RSA 273-A:1 XI defines terms and conditions of employment to be wages, hours and other conditions of employment. It excludes "managerial policy...confided exclusively to the public employer by statute...."
13. RSA 41:45-c establishes the statutory position of Deputy Town Clerk stating that another statutory position, the town clerk-tax collector, "shall appoint a deputy, who shall...have the powers of town clerk-tax collectors and may be removed at the pleasure of the town clerk-tax collector. The deputy shall perform such duties as are assigned to him by the town clerk-tax collector."

DECISION AND ORDER

The legislature has delegated to the Public Employee Labor Relations Board the authority to determine whether a bargaining unit is to be formed and, if so, the composition of the bargaining unit. RSA 273-A:8. Guidance on both questions is found within RSA Chapter 273-A and rules adopted under the chapter. It is the petitioner who bears the burden of proving that formation of a bargaining unit is appropriate and it is the petitioner who must prove, through testimony and documentary evidence, that each challenged position qualifies for bargaining unit inclusion.

The petition before the board is the second in two years to propose a bargaining unit for Litchfield employees. The Board's decision on the prior certification petition, Decision No. 1997-090, addressed the question of including the deputy town clerk in the bargaining unit but the inclusion of Litchfield's firefighters is a new issue.

The firefighters of the Litchfield Fire Department respond to emergencies when paged. They can expect long term part-time employment as illustrated by the careers of the witnesses. Those firefighters whose names appear on the full-time cover list from surrounding departments (Union #2) are truly on call to cover for full-time or part-time employees and ineligible for bargaining unit inclusion. Had they been subject positions, they would be excepted.

The past year's records (Union 3) and this year's response records (Town 1) illustrate that each of the part-time fire-fighters, those who are proposed as bargaining unit members, generally works several hours each week responding to calls, training, covering for the two full time fire-fighters and attending meetings. They are eligible to be included in any bargaining unit to be formed. The Town has devised a fire/emergency response system that depends on two full-time and twenty-seven permanent part-time firefighters all of whom perform the vital function for which they were hired only when there are fires or such emergencies. Both full-time and part-time employees are necessary to the day to day functioning of the Department.

These firefighters are part-time employees who work whenever there is a fire. They are within the definition of "public employee" and are not within the category of "on call" workers excludable from bargaining unit membership under RSA 273-A:1 IX. Rollinsford Police Association v. Town of Rollinsford, Decision No. 1988-052 (1988), Plaistow Police Association v. Town of Plaistow, Decision No. 1989-061 (1989). Teamsters Local 633 of New Hampshire v. Town of Rindge, Police Department, Decision No. 1996-066 (1996).

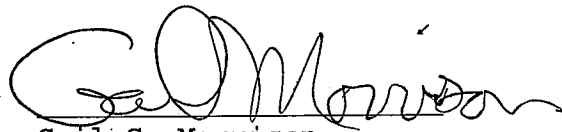
In its previous decision, Decision No. 1997-090, the Board found no merit to the argument that the deputy tax collector was a statutory employee whose conditions of employment are controlled by the statutory appointee and so proscribed from bargaining unit membership pursuant to RSA 273-A:1 IX (d). The Board found that the position in question was not an "appointed" position as precluded by the statute and, without a procedural reason to disturb that finding, the position of deputy town clerk is included in any bargaining unit that might be formed.

A bargaining unit is appropriate for the employees of the Town of Litchfield. It shall consist of twenty-seven part-time and two full-

time firefighters listed on the petition full-time firefighter-lieutenant, full-time firefighter-EMT, part-time firefighter, part-time firefighter-lieutenant, part-time firefighter-captain, as well as the deputy town clerk-tax collector, secretary-bookkeeper, office clerk, four laborers (incinerator), part-time highway laborer and assistant landfill operator-facilities manager. The fire chief, two deputies, the landfill operator-incinerator facilities manager, administrative assistant and selectmen's secretary are excluded as reflected on the petition.

So ordered.

Signed this 9th day of December, 1999.



Gail C. Morrison
Hearing Officer