

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

City of Manchester, Police Department	*	
	*	
Complainant	*	
	*	
v.	*	Case No. P-0716-10
	*	(Unit Modification)
	*	
Manchester Association of Police Supervisors	*	
	*	
Respondent	*	

Manchester Association of Police Supervisors	*	
	*	
Complainant	*	
	*	
v.	*	Case No. P-0716-9
	*	(Unfair Labor Practice)

City of Manchester, Police Department	*	
	*	
Respondent	*	Decision No. 2002-013
	*	

ORDER ON REMAND

The Board, meeting at its offices in Concord, New Hampshire, on January 23, 2002 took the following actions:


1. It reviewed the City's original modification petition, filed September 22, 1999, the Union's response thereto filed October 12, 1999, the Union's original unfair labor practice complaint filed on October 25, 1999, the City's response thereto filed on November 12, 1999, and the most current collective bargaining unit/bargaining agent certification, issued on April 6, 2000, pursuant to the contingency in Decision No. 2000-007, which excludes the position of Business Services Officer (BSO).
2. It reviewed its decision in this matter, Decision No. 2000-007, issued on

February 9, 2000, and the decision of the New Hampshire Supreme Court (Docket No. 2000-269) dated November 1, 2001 which remanded for a further determination of whether the duties of the BSO with respect to his employment with the City render him a "confidential employee," not eligible for membership in the MAPS bargaining unit.

3. It heard oral argument offered by the parties, each represented by professional advocates, on the question of the status of the BSO position. Prior to this presentation, the parties stipulated that the record in these proceedings be supplemented to reflect that the former BSO, the incumbent at the time of the court appeal, has left employment with the City and that a new employee has been hired to fill that vacancy. This new employee is neither the MAPS union president nor its chief negotiator.
4. It received representations that the next round of negotiations, involving 12 expiring contracts later this year, would again likely be held as "consolidated" bargaining involving multiple units, inclusive of MAPS, and would involve the same functions and expectations of the newly hired BSO as were required of Mr. Beaudoin in 1999, now to require an equivalent, if not an increased, amount of responsibility placed on that position by the Chief of Police as to calculating, costing and assessing data in response to particularized bargaining proposals. Likewise, all other BSO positions in the City known to or by the parties are not included in bargaining units.
5. It learned that one of the City's concerns was that the "vacated and remanded" order of the Supreme Court was inclusive of and nullified the most current bargaining unit certification dated April 6, 2000, which excluded the BSO position from the bargaining unit.
6. It found, in accordance with Appeal of the City of Laconia, 135 NH 421, 422-23 (1992) and Rule PUB 302.02 (c), that the Chief of Police was able to establish a valid need to be able to work with full candor and confidentiality with his five key advisors, one of whom is the BSO, on issues involving labor-management relations so that the City's positions on bargaining issues might be studied, prepared, costed and evaluated internally, before becoming public, without exposing those advisors to divisions of loyalty or impacting the efficiency of governmental functions.
7. It concluded that the unit certification document, as last amended on April 6, 2000, is appropriate for circumstances as explained on the occasion of this remand and directed that that certification document be reissued in its present form with a date concurrent with the date of this order.

So ordered.

Signed this 30th day of January, 2002.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard Roulx and E. Vincent Hall present and voting.