



273-A:8,I. In the alternative, the Town argues that should the Public Employee Labor Relations Board (PELRB) determine that a community of interest does exist among all, or a sufficient number, of the members proposed for inclusion in the bargaining unit, that in addition to those positions excluded in the Union's original petition, the following positions also be excluded as "supervisory personnel": Superintendent of Water/Sewer Department; Superintendent of Highway Department; Deputy Tax Collector; Police Lieutenant; Town Clerk/Tax Collector; Fire Captain and Fire Lieutenant. The Town also requested further exception of the following as "confidential employees": Town Accountant; "Confidential" Secretary to the Police Chief; and Water and Sewer Office Manager. The Town also raised a despositive issue alleging that the Union's filing was not timely in that it was not filed at a date that would allow the Town to be provided with at least 120 days notice prior to its budget submission date of February 1, 2003.

On February 12, 2003 the Union filed an Amendment to its original Petition for Certification wherein it added two additional employees. Following the evidentiary hearing that was conducted on February 21, 2003 before the Hearing Officer, the Union filed another written Amendment to its petition on February 26, 2003 to conform to the evidence that was presented by the parties during the hearing.

At the evidentiary hearing both parties were represented, presented exhibits and testimony and undertook cross-examination of witnesses. The Hearing Officer has considered all of the evidence admitted at hearing, assigned appropriate weight to documentary evidence and evaluated the credibility of each witness in making this decision and order.

FINDINGS OF FACT

1. The Town of Bristol ("Town") employs persons to carry out certain functions of municipal government and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The Service International Employees Union Local 1984 ("Union") seeks to become the exclusive bargaining representative for a proposed bargaining unit comprised of individuals employed by the Town who provide municipal services within the Town of Bristol in the following positions:

Town Accountant (1)	Librarian (1)*
Town Clerk/Tax Collector (1)	Library Custodian (1)*
Deputy Town Clerk Tax Collector (1)*	Public Works Superintendent (1)
Custodian (1)	OfficeManager/Admin.Sec-DPW (1)
Welfare Officer/Administrator* (1)	Chief Operator-Wastewater (1)
Highway Superintendent (1)	Asst. Chief Operator/Wastewater (1)
Driver/Laborer/Equip Operator(2)	Water Distribution/Sewer Collection
Highway Foreman (1)	Chief Operator (1)
Laborer (1) (Shared DPW/Highway)	Fire Captain (1)
Solid Waste Facility Attendants (3)*	Fire Lieutenants (2) and (1)**



6. All of those employed in the positions proposed for inclusion in the bargaining unit work within the same geographic area, namely the Town of Bristol.
7. All of those employed in the positions proposed for inclusion in the bargaining unit were treated as a combined group for purposes of orientation to the Town's employee manual and attended a meeting, presided over by the Chairman of the Board of Selectmen and at which all employees had been mandated to attend to hear the Town's presentation and at which the employees' comments and questions were invited.
8. All subject employees have the same holidays, vacation, and sick leave benefits as are provided in the employee manual (Joint Exhibit #14).
9. All full time and permanent part-time employees are eligible to participate in an employer sponsored health insurance program.
10. All of the Town's employees were subject to the provisions of an employee handbook preceding the current one that described their previous benefits.
11. Under the existing Employee Manual, no supervisors can change any of the employment benefits extended to employees. Only the Board of Selectmen can do so. (Joint Exhibit #14)
12. All employees are subject to a grievance process with the same final step of consideration by the Board of Selectmen.
13. Various positions proposed for inclusion in the bargaining unit receive joint training, e.g. traffic school, forest fire suppression, safety training with others proposed for inclusion in the proposed bargaining unit.
14. Representatives from the several Town departments work together on a joint safety or "risk/loss" committee established by the Town.
15. There are numerous examples of employee interaction. Individuals in support positions within the town hall and the police department interact daily and at times share each other's work overload. Individuals in sworn police service interact frequently with individuals in the fire service when assisting EMT Firefighters in carrying victims (so-called "carry-outs"), providing traffic control, responding to emergencies and other incidents and for traffic control necessary to highway and public works projects. Individuals in the Highway Department interact with those in the Department of Public Works (Water/Sewer) to share work and equipment. Highway employees are trained in forest fire suppression to help firefighters. Fire Department employees help Highway employees in flushing pipes and cleaning drainage grates.

16. All subject employees received the same general pay increase of 8% in the past budget which was the amount proposed by, and set by, the Board of Selectmen. At least in the case of the Police Department's increase, the Police Commission's recommended wage increase differed from that of the Selectmen and it was the Selectmen's position that was implemented.
17. Some testimony was offered to indicate that the Board of Selectmen have final executive authority over proposed wages; control the hiring of new employees and creation of new positions through their control of the budget formation process and budget control of expenditures; and make the final determination on employee terminations.
18. The testimony regarding the role of the Board of Selectmen in the hiring, compensation and termination of employees regardless of whether such persons work for the elected Police Commission, the elected Fire Commission, the elected Library Board of Trustees or the appointed Water and Sewer Commission differs from the authority given to these same commissions by the General Court. The testimony that, in practice, these bodies do not set personnel policy within the Town, but rather work in conjunction with the Board of Selectmen who do so indicates an accommodation by the commissions to the Board of Selectmen or a high degree of cooperation among the incumbent leaders of this community. It is not interpreted as an abdication of authority by those other commissions.
19. The several Commissions generate separate operational procedure manuals or standard operating procedures governing the performance of their assigned functions.
20. Credible testimony by all of the Union's witnesses expressed that the employees proposed for inclusion in the bargaining unit held a self felt community of interest characterized by statements such as "we all work for the town's people", "all out for the same goal", "all serve the taxpayer", we "help out each other."
21. No evidence was offered to establish that any employee would feel a division of their loyalty between the Town and being a member of a bargaining unit should it be formed.
22. The Town Clerk/Tax Collector is an elected official. The Deputy Town Clerk is not.
23. There is a single town budget that incorporates all municipal departments and functions and is established and managed by the Board of Selectmen. The revenue side of that budget contains an enterprise fund for water and sewer services.

24. The Board of Selectmen and the various commissions work in conjunction with one another and coordinate the performance of their respective functions, including certain personnel responsibilities.
25. The Town's organizational functioning is significantly more fluid and dynamic than would otherwise be represented by the organizational charts (Joint Exhibits #1 and #24) that were offered into evidence. Further, Joint Exhibit #1 was prepared by the Town's representative in these proceedings for use in these proceedings. While the Town Administrator responded to a question of his representative that characterized Joint Exhibit #1 as "accurate" except for depiction of Town Clerk/Tax Collector he immediately qualified his answer, indicating that he doesn't really rely on written organizational charts to depict all interaction or flow of communication accurately.
26. The actual chain of command from the Public Works Superintendent in public works (water/sewer) or the Police Chief or Fire Chief upward within the Town hierarchy differs based upon whether the issue is one related to personnel, in which case it proceeds through the Town Administrator's office to the Board of Selectmen, or relates to functional operations, in which case it proceeds to the separate commissions directly who may or may not involve the Town Administrator and the Board of Selectmen in the decision or report process.
27. The uniform Personnel Action Form (Union Exhibit #1) is used by all departments within the Town. However, there was also credible testimony from the Town Administrator that the Commissions would use the same Personnel Action Form but obliterate the Board of Selectmen reference and substitute the name of their respective commission at the end of the document.
28. Credible supporting testimony established that the Board of Selectmen have the final authority for all hiring, terminations, pay increases, and written disciplinary warnings for administrative personnel within town hall, highway personnel, water and sewer personnel and fire personnel. There was insufficient evidence regarding the specific hiring process for individuals employed for service within the library upon which to make a finding as to how the process there was tethered to the Board of Selectmen.
29. The Board of Selectmen's actual role in the hiring of police personnel is unclear because while the Police Commission may have the statutory authority under enabling legislation, testimony regarding how personnel were actually hired through the approval of payment for the position was not definitive.
30. Employee evaluations for all subject employees are conducted using the same evaluation form that is basically a checklist that, for the most part, directs the evaluator to choose among three boxes when commenting on performance

criteria. The form does not solicit nor provide that the evaluator recommend a wage increase. (Joint Exhibit #30).

31. The secretary employed in the police department reports to the Police Chief, as does the police lieutenant. Only the Police Chief has the authority to discipline and suspend. The Police Chief schedules the shifts, vacation and overtime for police personnel. The Police Chief can only recommend hiring personnel to the Police Commission.
32. Merit increases, in wages, in practice, actually amount to annual or longevity raises and are almost universally given in similar amounts to all employees.
33. Only the Board of Selectmen, or commissions or board of library trustees within their relative spheres of responsibility, can approve the issuance of written warnings.
34. The Highway Superintendent cannot hire or fire any of the employees within the highway department without the approval of the Town Administrator or the Board of Selectmen. Any performance evaluation that he may conduct is not tied to employee wage increases or decreases. He consults with the Town Administrator on matters of discipline and does not issue written warnings to employees in the highway department before they are at least approved by the Town Administrator and possibly the Board of Selectmen.
35. The Public Works Superintendent supervises the operation of the water and sewer functions within the Town. The incumbent's testimony is that he is appointed to his position by both the Water and Sewer Commission and the Board of Selectmen. If he needs to hire an individual he would recommend that action to the Commission and if they agreed they would sign a Personnel Action Form and submit it to the Board of Selectmen before the hiring would take place. This Superintendent would seek approval of the Commission on written warnings to employees. Suspensions and terminations of employees within this department would first be recommended by him to the Commission and, in turn, they would submit the action to the Board of Selectmen for concurrence.

#### DECISION AND ORDER

The legislative mandate of the Public Employee Labor Relations Board (PELRB) includes the authority to consider petitions for the certification of bargaining units (RSA 273-A:10), determine the appropriate composition of bargaining units (RSA 273-A:8, I) and thereafter to exercise authority to order elections, if appropriate (RSA 273-A:10, I(b)). Where the parties involved cannot agree as to the composition of the proposed bargaining

unit evidenced by the filing of a mutual Petition for Certification, the PELRB conducts a hearing for such purpose, makes a decision regarding certification and then issues an appropriate order of election, if necessary, under Pub 303.01.

In the present case, at the outset there is a threshold issue raised by the Town regarding the timeliness of the Union's petition for certification of a bargaining unit. The Town requests the PELRB to dismiss the certification because even if the unit were certified the Union could not provide the Town with the required minimum 120 day notice. (See RSA 273-A:3, II(a); see also N. H. Admin. Rules, Pub 301.01). The board has ruled on the 120 day limitation issue previously (See PELRB Decision #2002-007) and the Supreme Court has affirmed the board's application of the statute and its rules concluding that "petitions for certification for bargaining units without a certified representative may be filed at any time without regard to the time limits contained within the contract bar rule and Rule 301.01(b)." Appeal of Manchester, 148 N.H. \_\_\_\_\_. (Slip Opinion 2002-341, issued 4/4/03). Therefore, the PELRB denies the Town's request that the Union's petition be dismissed on the basis that it was not timely filed with the caveat that should there be an exclusive representative elected, the Town cannot be compelled to negotiate so-called "cost items" unless the requisite 120 day pre-budget submission notice is met.

The merits of the respective parties' positions is considered within an adjudicative process that provides that each bargaining unit is to be reviewed on its own circumstances on a case by case basis. Appeal of Town of Newport, 140 N. H. 343, 352 (1995). This case is unlike certifications issued by the PELRB in response to Petitions that propose unit compositions that are consented to by all parties where the concept of self-determination between the parties is accorded all but commanding weight. In those cases, the PELRB assumes that the parties have given requisite consideration (1) to the composition of the unit, (2) the impact the proposed change will have on the operation of that particular governmental unit, and (3) that both parties have concluded that it constitutes a workable arrangement between a public employer and its employees. As a consequence, unless an agreed petition for unit certification is filed with the PELRB that presents a proposed bargaining unit, that on its face, causes the PELRB, on its own motion, to solicit additional information or conduct an evidentiary hearing, a significantly lesser degree of scrutiny is exercised before that certification of a bargaining unit is granted. In the instant case a more thorough scrutiny of this bargaining unit is required of the PELRB because the matter before it is contested and each party has participated in an evidentiary hearing, presented exhibits and witness testimony and has had the ability to cross-examine the other's witnesses. Much more information thereby becomes available to the PELRB upon which to consider whether or not a sufficient community of interest exists and a certification should issue.

The instant matter involves a municipality that provides what can be characterized as traditional municipal services of administration, fire, police, highway, water and sewer and also part-time library services. Its citizens have elected to do so, utilizing enabling statutes, in a manner to structure the delivery of these services through the creation of an elected Board of Selectmen, as well as an elected Fire Commission, an elected Police

Commission, an elected Board of Library Trustees and a Water and Sewer Commission whose members are appointed by the Board of Selectmen. Each of these governmental entities within the Town of Bristol is assigned separate statutory authority, duties and responsibilities by the legislature. (See Finding of Fact #5). Some testimony offered by several witnesses indicated that some blurring or blending of the authority, duty and responsibility of these created entities has occurred through the actions of the respective incumbents. (See Findings of Fact #16-#18, #25 and #30). The various positions that the Union has proposed for inclusion in the proposed bargaining unit are employed within several departments that, while included in a single budgetary process, are entitled to exercise significant statutory prerogatives within their own spheres of authority.

In the Town of Bristol all full time and permanent part-time employees, whatever their work assignment, share many of the indicia contained within the "community of interest" that a proposed bargaining unit must possess under RSA 273-A:8, I and Pub 302.02 (b). What is not proven is that the employees in this municipality share a uniform hiring authority and individual wage setting process because of the autonomy held, albeit exercised to varying degrees, by the several elected and appointed bodies. That these bodies have joined in offering similar benefits to those employed in the several departments is not sufficient to create an obligation that these separate, though cooperating, local government entities must now combine to negotiate a single collective bargaining agreement which they would be compelled to do if the unit sought by the Union were granted.

In certain schemes of governance that exist in the many towns in New Hampshire, the fact that differing departments may possess significant statutory prerogatives within their assigned authority may not substantially affect the community of interest among members of a proposed bargaining unit. However, given the present scheme of governance in the Town of Bristol and the existing statutory authority assigned by the legislature to each of the relevant entities, the community of interest is diminished and the restriction of N.H. Admin. Rule, Pub 302.02 (c) must also be considered. That rule provides that the PELRB must consider "(1) The effect of forming any particular bargaining unit on the efficiency of government operations contemplated in RSA 273-A:1, XI". In turn, that referenced statute addresses the sum and substance of the reason bargaining units are formed, namely to mutually negotiate the "terms and conditions of employment" and protect so-called "management rights."

One of these management rights is the public employer's choice of organizational structure that is defined within the exclusive prerogative of the employer. (RSA 273-A:1, IX). In the instant case individuals that occupy the respective offices of Selectman, Commissioner, or Trustee seem to have come to an accommodation that has resulted in a practice where the evidence presented indicates a deferral to the Board of Selectmen in the hiring of employees, in the application of significant discipline to employees, and in the termination of employees in departments governed by separately elected bodies. Such an accommodation is transitory and could be altered by any election that changes the make up of any of these elected bodies.

While the Hearing Officer does find certain indicia of a community of interest existing among the employees of the Town of Bristol as reflected in the findings of fact, above, those indicia are not found to be of sufficient weight to overcome the authority reserved to the Police Commission, the Fire Commission and the Water and Sewer Commission by the statutory options selected by the voters of this municipality. The fragmentation of authority presents a serious impediment to the efficiency of government operations should individuals wanting to exercise a greater degree of statutory autonomy be elected or appointed to the several commissions and board or trustees. In light of the statutory autonomy reserved to several commissions and boards in Town of Bristol whether presently exercised or not, it is not reasonable for those employees within the several departments and named in the Union petition to negotiate jointly at this time.

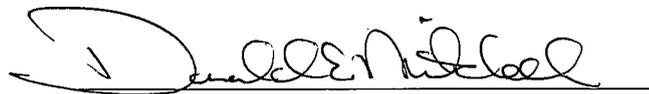
Having made this determination, it is unnecessary to consider the specific exceptions of those positions alleged by the Town to meet the statutory requirements of "supervisory" or "confidential" positions. It should also be noted in the event that a new petition is considered in the future, that there was insufficient evidence produced at the hearing in regard to library employees upon which a determination could be made regarding any inclusion at this time. Also, the Town Clerk/Tax Collector is elected by popular vote and is not, therefore, considered a "public employee" pursuant to RSA 273-A:1, IX. At present, the departments of police, fire, water and sewer, highway and administration, respectively, do not employ the minimum of ten (10) qualifying individuals.

The Hearing Officer does not, on the evidence presented, find the existence of a sufficient community of interest among all or a substantial and significant portion of the named positions requested by the Union in its Petition for Certification, as Amended. In the event that the number of individuals employed within any one of those departments governed or overseen by a separate Commission or Board of Trustees should rise to the required minimum of ten employees, or other significant change in circumstance should transpire, then a new petition could be filed on the behalf of any number of the positions appearing in the Union's Petition for Certification, as Amended.

Therefore the Petition for Certification, as Amended in its present form, is DENIED.

So Ordered.

Signed this 16<sup>th</sup> day of April, 2003.

  
Donald E. Mitchell, Esq., Hearing Officer