

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Keene Police Officer's Association,  
NHFT, AFT, AFL-CIO

Petitioner

and

City of Keene

Respondent

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Case No. P-0722-2

Decision No. 2004-077

Modification Petition

APPEARANCES

Representing the Keene Police Officers Association:

Teresa D. Donovan, Esq.

Representing the City of Keene:

Thomas F. Flygare, Esq.

Also Appearing as Witnesses:

Joanna Balcom, Dispatcher, City of Keene  
John Stewart, Pres., Keene Police Officers Association  
Arthur Walker, Chief of Police

BACKGROUND

The Keene Police Officers Association (hereinafter "KPOA") filed a Modification Petition with the Public Employee Labor Relations Board (PELRB) on December 2, 2003 seeking to add the position of "full-time police dispatcher" to the existing certified bargaining unit. In explaining the need for the modification request, the KPOA stated that the dispatcher positions are "professional in nature and not included as administrative positions in the District. Their inclusion into the bargaining unit would be [sic] logical placement due to the professional nature of their work." The City of Keene (hereinafter "the City") filed objections to the petition on December 15, 2003. The City asserted, among other things, that the petition fails to describe

any conditions that have changed since the parties last negotiated a collective bargaining agreement and that the petition fails to propose a bargaining unit with a community of interest.

A hearing on the merits of the KPOA's petition was conducted on January 14, 2004 before the undersigned Hearing Officer at PELRB offices in Concord, New Hampshire. Both parties were represented by counsel at the hearing, and had the opportunity to present witnesses for examination, to undertake cross-examination, and to offer exhibits into evidence. At the conclusion of the hearing, the record was closed subject to the filing of post-hearing and reply briefs. Said briefs were filed in a timely fashion by the parties' counsel and the record was officially closed on February 3, 2004. Upon review of all filings submitted by the parties and consideration of all relevant evidence, the Hearings Officer determines the following:

### FINDINGS OF FACT

1. The City of Keene employs police officers, police dispatchers and other personnel in the operation of its city government and therefore constitutes a public employer within the meaning of RSA 273-A:1, X.
2. As of July 14, 2003, the Keene Police Officers Association, NHFT, AFL-CIO became the duly certified exclusive bargaining representative for the bargaining unit, employed by the City, comprised of Police Patrol Officers who have completed their probationary period and excluding the positions of Sergeant, Master Sergeant, Lieutenant, Deputy Chief, Chief, Crime Prevention Officer, Youth Aide Officer and Youth Aid Officer Assistant. (Joint Exhibit No. 1).
3. The unit description language set forth in paragraph 2, above, has remained the same since the original formation of the bargaining unit in 1982.
4. At the time the bargaining unit was formed in 1982, police officers performed dispatching functions.
5. In 1988 the City hired civilian dispatchers, on a full-time basis, to perform police dispatching functions.
6. The City and KPOA are currently operating under a collective bargaining agreement (CBA) for the period July 1, 2000 to June 30, 2004. The certified exclusive representative at the time the current CBA was negotiated was the State Employees Association of New Hampshire. John Stewart ("Stewart"), President of the KPOA, was on the union's bargaining team for the current CBA. He also served on the union's bargaining team for the previous CBA, for the period July 1, 1997 to June 30, 2000. (City Exhibit No. 2, p. 21).
7. Article I of the CBA, entitled "Unit Description," provides the following:

The Unit to which this Agreement is applicable shall consist of all permanent full-time Keene Police Department employees who have finished their employment probationary period in the following job classifications: Police Officers. All other job classifications and employees of the Keene Police Department shall be excluded.

8. The unit description language contained in Article I has remained the same for the past three (3) contracts, covering the periods 1993 – 1997 (City Exhibit No. 1), 1997 – 2000 (City Exhibit No. 2) and 2000 to 2004.
9. Under the unit description as set forth in Article I, the position of police dispatcher is excluded from the current bargaining unit. (City Exhibit No. 1, City Exhibit No. 2) Testimony of Stewart.)
10. The general duties and responsibilities of the dispatcher position include, but are not limited to, providing “specialized clerical support services to departments involved in communications from the dispatch center” and transmitting “messages and instructions to officers on patrol, dispatchers, Police, Fire, and other emergency services to answer complaints and calls for emergency service...” (Union Exhibit No. 1)
11. Joanna Balcom (“Balcom”) has been employed as a dispatcher for the City for the past sixteen (16) years. Over the course of her tenure with the police department there has been a high turnover rate for dispatchers, estimating that twelve to fourteen dispatchers have left during this period. She is currently one of four (4) dispatchers, who are all now in unison on desiring to be included in the police officer’s union. She stated that this was not always the case in the past. On cross-examination, Balcom acknowledged that the reason the instant petition was filed is because the four dispatchers would now rather be “in” the police officers bargaining unit, rather than “out.” When asked if there was any other change that was the basis for the petition, or if this was “the only change,” she acknowledged that this was the only change.
12. Stewart has been employed as a police officer for the City for eleven (11) years. He testified that the KPOA was originally affiliated with the State Employees Association (SEA), and that during the most recent contract period the KPOA became independent and thereafter affiliated with the New Hampshire Federation of Teachers (NHFT). During November 2003 the dispatchers approached the KPOA about joining the police officers bargaining unit. Every aspect of the matter was discussed in detail amongst the current membership and it was determined that there was no detriment to having them join. Since the time for negotiating a new contract was coming up in March of 2004, it was felt that this was an appropriate time to seek the dispatchers inclusion in the bargaining unit.

13. Stewart exchanged e-mails with John Maclean, Keene City Manager, during November 2003 in an effort to reach agreement on the instant modification. (City Exhibit No. 3)
14. On cross-examination, Stewart indicated that he did not believe there were any changes in working conditions for either the police officers or the police dispatchers since the current contract went into effect.
15. Arthur Walker, Chief of Police, also testified that there have been no changes in working conditions for police officers or police dispatchers.
16. There was no evidence offered to establish that the current composition of the bargaining unit is incorrect or has been problematic for the either party.

## DECISION AND ORDER

### JURISDICTION

The New Hampshire Public Employee Labor Relations Board is the administrative agency charged with determining the composition of public employee collective bargaining units. RSA 273-A:8. The composition of each bargaining unit is evaluated on its own circumstances on a case-by-case basis. *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995). The criteria for modification of a bargaining unit is set forth in the PELRB's administrative rule Pub. 302.05. In the case at hand, the KPOA has filed a modification petition seeking to amend the composition of its certified unit by adding the position of police dispatchers and, in response thereto, the City has filed objections. As this dispute presents a matter that arises out of its primary jurisdiction, PELRB review is appropriate under the circumstances.

### SUMMARY OF DECISION

The modification petition filed by the KPOA is denied. There is insufficient evidence presented of a "change in circumstances" to warrant a modification of the certified bargaining unit at this time. Additionally, over the period of several contracts, the parties have settled upon a unit description that includes all full-time police officers but excludes all other employees of the Keene Police Department. During this same period, and going as far back as 1982, the unit certified by the PELRB has remained unchanged. Meanwhile, the current position of full-time police dispatcher was established in 1988. In light of this history, and the lack of evidence regarding a change in circumstances since negotiations for the current CBA, the petition must be denied.

### DISCUSSION

Modification of a bargaining unit may be accomplished pursuant to the PELRB's administrative rule Pub. 302.05. Pub. 302.05 (a) provides, in pertinent part, that:

Where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed, or where a prior unit recognized under the provisions of RSA 273-A:1 is alleged to be incorrect to the degree of warranting modification in the composition of the bargaining unit, the public employer, or the exclusive representative...may file a petition for modification of bargaining unit.

N.H. CODE ADMIN. R. PUB. 302.05 (a). Pub. 302.05 (b) further provides, inter alia, that:

A [modification] petition shall be denied if:

.....

- (2) The petition attempts to modify the composition of a bargaining unit negotiated by the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force.

N.H. CODE ADMIN. R. PUB. 302.05 (b). In the matter at hand, the KPOA's petition presents issues of whether or not circumstances surrounding the formation of the existing bargaining unit have changed and, if so, when did such a change occur. In accordance with Pub. 302.05(b), the petition must be denied if the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force. It should be noted that there has been no claim that the current composition of the bargaining unit is incorrect.

At the outset, it is difficult to assess the KPOA's petition in this regard because it does not describe a change in circumstances *per se*. The statements in its petition that police dispatchers are "professional in nature and not included as administrative positions in the District" and, moreover, that "[t]heir inclusion into the bargaining unit would be [sic] logical placement due to the professional nature of their work," although arguably true and accurate, do not specifically describe a "change in circumstances." Indeed, it may reasonably be claimed that these explanations offered by the KPOA as the basis for its modification request would likely have been just as applicable in 1988, when the police dispatcher position was first established, as it was in December 2003 when the instant petition was filed.

Ms. Balcom acknowledged that the reason the instant petition was filed is because the four dispatchers would now rather be "in" the police officers bargaining unit, rather than "out." (Finding No. 11, above). When asked if there was any other change that was the basis for the petition, or if this was "the only change," she acknowledged that this was the only change. (Finding No. 11, above). Although this may well constitute a "change" from past sentiments felt amongst the police dispatchers, particularly in light of Ms. Balcom's forthright testimony that they have only recently been in "unison" on this issue, it is insufficient to overcome the regulatory mandate contained in Pub. 302.05(b). Simply stated, if either an exclusive representative or a public employer could open up a certified unit to some sort of modification whenever it unilaterally determined was the appropriate time, then the restrictive language contained within this regulation would be rendered meaningless.

Although the position of full time police dispatcher was first established in 1988, there apparently was no attempt to include it within the patrol officer bargaining unit at that time. Certainly the creation of a new job title that shares a community of interest with bargaining unit

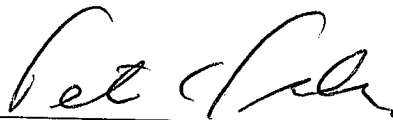
positions would constitute a "change in circumstances," within the meaning of Pub. 302.05(a), to justify the filing of a modification petition. Nevertheless, the record here reflects that the certified bargaining unit has remained unchanged since 1982 and that the parties have agreed to a recognition clause in the current CBA, and in at least the previous two (2) CBA's, that excludes, among other job titles, the position of police dispatcher. (Finding Nos. 3, 8 & 9, above). It is also undisputed that the working conditions of police officers and police dispatchers have remained *status quo* during the term of the current CBA. (Finding Nos. 14 & 15, above).

It is understandable, given the KPOA's new affiliation, that the dispatchers and police officers feel it is the right time to modify the bargaining unit. This desire, however, conflicts not only with the plain wording of Pub. 302.05(b), in that there has been no ascertainable change in circumstances, but also with the parties' long standing agreement, as expressed in Article I of the CBA, that the unit would only consist of patrol officers. Given the fifteen (15) year history of the police dispatcher position, the ongoing collective bargaining between the parties during this period, and the lack of a change in circumstances since the effective date of the current CBA, Pub. 302.05(b) requires that the instant petition be denied. Since the KPOA's petition is denied on this basis, it is unnecessary for the Hearing Officer to address the other objections raised by the City in its answer.

The KPOA correctly points out that the PELRB has certified bargaining units in the past that include the job titles of both police officer and police dispatcher. Setting aside the issue of whether these positions share or fit the definition of "professional employee" under RSA 273-A:1, VIII, there can be no dispute that they both perform professional tasks and responsibilities. As a matter of law, such job titles may be combined in the same unit and parties are not precluded from reaching an agreement in this regard. Indeed, as previously noted by the PELRB, "the administrative rules contemplate that modification issues be negotiated..." *State Employees Association of New Hampshire, Local 1984, for Strafford County Corrections Employees v. Strafford County Commissioners*, PELRB Decision No. 2001-063, p. 5 (July 16, 2001). With this in mind, the instant decision should not be interpreted as otherwise prohibiting the parties from negotiating an amendment to the CBA's unit description clause, and subsequently filing a joint modification petition with the PELRB, in order to add the position of police dispatcher to the bargaining unit.

So Ordered.

Signed this 19<sup>th</sup> day of May, 2004.



Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

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Thomas F. Flygare, Esq.