



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 1444

Petitioner

v.

Town of Lancaster

Respondent

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Case No: G-0001-1

Decision No. 2004-159

APPEARANCES

Representing AFSCME Council 93, Local 1444:

Bryan Lamirande, Staff Representative
Katherine M. McClure, Esquire

Representing the Town of Lancaster:

Mark T. Broth, Esquire

BACKGROUND

AFSCME Council 93, Local 1444 (hereinafter "the Union") filed a Petition for Certification with the Public Employee Labor Relations Board (PELRB) on June 10, 2004 seeking to certify a bargaining unit consisting of all regular/permanent full and part-time employees of the Town of Lancaster in the departments of Highway, Water & Sewer, Fire, Transfer Station, Police, Colonel Town Recreation, Town Offices and Library. The Town of Lancaster (hereinafter "the Town") filed its exceptions to the Union's Petition for Certification on June 25, 2004 raising several issues with respect thereto and requesting, among other things, that the petition be dismissed.

First of all, the Town asserts that the fifteen (15) administrative services employees, namely the Highway Foreman, Water/Waste Water Treatment Plant Supervisor, the Water/Waste Water Collection and Distribution Supervisor and several laborers and/or equipment operators, the six (6) fire/EMS employees, the three (3) Police Patrolmen, and the two (2) Town Office Department employees, namely the Custodian and Deputy Tax Collector, as specified in the Union's proposed bargaining unit, do not share either a history of workable and acceptable collective negotiations or

the same historic craft or profession. The Town asserts that these employees work in different locations and perform different duties, with different tools and equipment, than their other respective Town employees. Referencing the call Emergency Medical Services ("EMS") employees, the Town also states that these employees are not public employees within the meaning of RSA 273-A:1, IX and therefore should be excluded from the proposed bargaining unit.

The Town submits that the fifteen (15) administrative services employees, the six (6) fire/EMS employees, the three (3) Police Patrolmen, and the two (2) Town Office Department employees do not function within the same organizational unit and otherwise do not share a sufficient community of interest to be combined in the same bargaining unit. The Town further contends that the positions Highway Foremen, Water/Waste Water Treatment Plant Supervisor, Water/Waste Water Collection and Distribution Supervisor, Transfer Station Working Foreman, and Fire/Emergency Management Lieutenant have supervisory authority, within the meaning of RSA 273-A:8, II, and should be excluded from the proposed bargaining unit on this basis. Based upon the foregoing, the Town requests, inter alia, that the PELRB deny the Union's petition. Immediately prior to hearing, the Union filed its response to the Town's exceptions.

A hearing on the merits of the Union's petition was conducted on July 21, 2004 before the undersigned Hearing Officer at the offices of the Public Employee Labor Relations Board in Concord, New Hampshire. Both parties were present at the hearing with their representatives, and had the opportunity to present witnesses for examination, to undertake cross-examination, and to offer exhibits into evidence.

At the outset of the hearing, the parties informed the Hearing Officer that they had reached certain stipulations. Specifically, the parties agreed that the positions of Highway Foremen, Water/Waste Water Treatment Plant Supervisor, Water/Waste Water Collection and Distribution Supervisor, and Transfer Station Working Foreman were supervisory positions, within the meaning of RSA 273-A:8, II, and should appropriately be excluded from the proposed bargaining unit. (See Joint Exhibit No. 1). It was also stipulated that the part-time Emergency Medical Services workers are not eligible to be included in the proposed bargaining unit (See Joint Exhibit No. 1), nor the position of Superintendent of Recreation. Accordingly, said positions were withdrawn from the petition.

Thereafter, counsel for the Town indicated his intent to move for a dismissal based upon his understanding of the limited evidence to be presented by the Union. In response, the Union requested a continuance of the hearing in order to present additional witnesses and evidence, and the Town objected. The Hearing Officer denied the Union's request for a continuance.

Following submission of the Union's case, which consisted solely of testimony from the Union representative (as questioned by Union counsel and cross-examined by Town counsel), the Town moved to dismiss, based upon its assertion that the Union had failed to meet its burden of proof of establishing a sufficient "community of interest" for the proposed bargaining unit. The Union objected. The Hearing Officer took the Town's motion under advisement, and then invited the Town to present its case, if any, in response. The Town rested. Following closing arguments by the parties' representatives, the record was closed. Upon review of all filings submitted by the parties and the consideration of all relevant evidence, the Hearing Officer determines the following:

FINDINGS OF FACT

1. The Town of Lancaster ("the Town") is a public employer within the meaning of RSA 273-A:1 X.
2. AFSCME Council 93, Local 1444 ("the Union") has petitioned the PELRB to become the certified and exclusive bargaining representative of a proposed bargaining unit consisting of certain regular/permanent full and part-time employees of the Town in its Highway, Water & Sewer, Transfer Station, Police, Fire/EMS, and Town Office Departments.
3. Bryan Lamirande, AFSCME Staff Representative, conducted the Union's organizing drive for the Town's employees and filed the instant petition. He neither lives in the Town nor is employed by it. He testified, however, that he is particularly familiar with the Town and its employees having grown up in the area. He described his personal observations of Town employees in their work and his review of the Town of Lancaster Personnel Policy (Joint Exhibit No. 2). Based upon his observations of and conversations with Town employees, as well as his review of the personnel policy, he concluded that they shared a sufficient "community of interest." He testified that the employees work together, for the same employer, and within close geographic locales. Moreover, based upon his review of the written personnel policy, he states that the various department's within the Town fall under the centralized oversight of the Town Manager and share, among other things, common work rules and working conditions.
4. On cross-examination, Mr. Lamirande agreed that the Town operates under a town manager form of government and that its police, fire, town hall, highway, water & sewer, and transfer station departments are all separate organizational units within the Town, each falling under the direction of separate department heads. He acknowledged that the department heads are responsible for their own department's employees and that they do not conduct cross-evaluation of employees from other departments. He also acknowledged that, in accordance with the personnel policy, the hours of work differ between the town office, public works and police departments.
5. The Town's Personnel Policy describes various terms and conditions of employment for Town employees, including, but not limited to, the hours of work for each department (p. 7), code of conduct (p. 9), chain of command (p. 10), performance evaluations/annual wage improvements (p. 11), promotions (p. 12), layoffs (p. 13), demotions (p. 14), discipline (p. 15), grievance procedure (p. 18), sick leave (p. 19), leaves of absence (p. 20), vacations (p. 25), holidays (p. 27), separation from employment (p. 30), and pay classification system (Addendum III). (Joint Exhibit No. 2).
6. No testimony was presented from any employee of the Town or from within the proposed bargaining unit.

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).

SUMMARY OF DECISION

The Town's Motion to Dismiss is granted. The Union, as the petitioner in these proceedings, bears the burden to prove, by a preponderance of the evidence, that the bargaining unit proposed in its Petition for Certification is appropriate for certification under RSA 273-A:8. See N.H. CODE ADMIN. R. PUB 201.06 (b) and (c). Here, the evidentiary record presented by the Union is insufficient to establish a "community of interest" that is shared among ten (10) or more employees, and thus the petition must be denied as presented.

DISCUSSION

Through the instant Petition for Certification, the Union seeks to certify a bargaining unit consisting of various positions employed by the Town and establish a so-called "wall to wall" or "town-wide" bargaining unit. The formation of a bargaining unit is governed by the provisions of RSA 273-A:8, the provision of the law that establishes criteria for the PELRB to take into consideration when determining an appropriate bargaining unit. RSA 273-A:8 I specifically provides that "[i]n making its determination the board should take into consideration the principle of community of interest. A community of interest may be exhibited by one or more of the following criteria, although it is not limited to such:

- (a) Employees with the same conditions of employment;
- (b) Employees with a history of workable and acceptable collective negotiations;
- (c) Employees in same historic craft or profession; [and]
- (d) Employees functioning within the same organizational unit."

RSA 273-A:8 I further requires that "in no case shall the board certify a bargaining unit of less than 10 employees with the same community of interest." Given that the Town has filed exceptions to the instant petition, in these adjudicative proceedings it is the Union that bears the burden of establishing a sufficient "community of interest," as shared among the various employees referenced in the petition, and that there are at least ten (10) or more such employees. PELRB regulations bestow upon the petitioner the burden of going forward with a case and the obligation to prove the proposition that it asserts by a preponderance of the evidence. N.H. CODE ADMIN. R. PUB 201.06 (b) and (c). Here, the Union states that its proposed bargaining unit, consisting of approximately nineteen (19) employees, appropriately share a "community of interest" and may be certified under the law.

The record in this case indicates that the only evidence presented by the Union consisted of testimony from the Union representative who filed the instant petition, as well as the Town's personnel policy. The Union offered no testimony from actual employees in the various job classifications. As a result, the Hearing Officer is limited in his ability to assess the various work functions and working conditions of each position in the proposed unit, and the extent to which their work is integrated in service to the Town. The Hearing Officer also has insufficient evidence before him as to the level of "self-felt" community of interest, if any, that exists between employees, given that such evidence is most appropriately presented through testimony of the employees themselves. While the Hearing Officer does not question the credibility or sincerity of the Union's witness, his testimony lacked direct first hand knowledge of Town operations and was not sufficiently probative

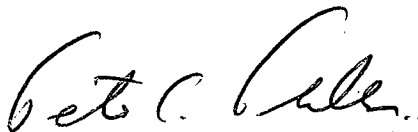
regarding the issues in dispute. In this regard, Mr. Lamirande's testimony regarding his interpretation of the Town's personnel policy was just that, his interpretation, and it must be weighed in that context. The personnel policy itself, while certainly relevant to the matter at hand, cannot in and of itself form the basis of a certified bargaining unit.

The Hearing Officer notes that the PELRB has certified town-wide bargaining units in the past, and he has reviewed the cases cited by the Union. See *Appeal of the Town of Litchfield*, 147 N.H. 415 (2002), *AFSCME Council 93 v. Town of Litchfield*, PELRB Decision No. 1999-123 (December 9, 1999); *Hudson Police, Fire & Town Supervisors' Association v. Town of Hudson*, PELRB Decision No. 2003-045 (May 8, 2003). However, the composition of each bargaining unit must still be evaluated on its own circumstances on a case-by-case basis. *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995). Thus, the fact that a town-wide unit may exist in one instance does not necessarily mean that it is appropriate in another. As past cases reflect, testimony from employees in various job classifications of the proposed unit is particularly relevant and probative under these circumstances.

Considering all the evidence presented in a light most favorable to the Union, the Hearing Officer agrees with the Town that there are insufficient facts in the record to support the certification of a bargaining unit at this time. Therefore, the Town's Motion to Dismiss is granted and the instant Petition for Certification is dismissed.

So ordered.

Signed this 29th day of September, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Bryan Lamirande, Staff Representative
Katherine M. McClure, Esquire
Mark T. Broth, Esquire