



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association,  
SEIU Local 1984

Petitioner

v.

New Hampshire Judicial Branch

Respondent

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Case No: S-0427-1

Decision No. 2005-157

APPEARANCES

Representing State Employees Association, SEIU Local 1984:

Lorri Hayes, Esq., Contract and Field Operations Administrator  
New Hampshire State Employees Association

Representing New Hampshire Judicial Branch:

Howard Zibel, General Counsel  
New Hampshire Judicial Branch

BACKGROUND

The State Employees Association, SEIU Local 1984 (hereinafter "Union") filed a Petition for Certification with the Public Employee Labor Relations Board ("PELRB" or "Board") on August 11, 2005 seeking to certify a bargaining unit consisting of all full-time court monitor/assistants employed by the New Hampshire Judicial Branch (hereinafter "Judicial Branch"). The Judicial Branch filed its response to the Union's petition on September 19, 2005, stating that while court monitor/assistants within the superior court have the same conditions of employment, function within the same organizational unit, and have common work rules, the court monitor/assistants in the family division and probate court do not share those conditions of employment, do not function within the same organizational unit, and do not have the same work rules. Accordingly, the Judicial Branch requests that the Board determine that the appropriate

bargaining unit is a unit consisting only of the court monitor/assistants employed in the superior court.

A hearing on the merits of the Union's petition was conducted on October 11, 2005 before the undersigned-hearing officer, at the offices of the 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. The parties' representatives executed a stipulation of facts that was entered into the record as Joint Exhibit 1, and is incorporated below as Findings of Fact 1 through 6. Following the filing of post-hearing briefs by the parties' representatives on October 28, 2005, 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 NH Judicial Branch is an employer within the meaning of RSA 273-A:1, X.
2. The court monitor/assistants are employees within the meaning of RSA 273-A:1, IX.
3. The Judicial Branch consists of the Supreme Court, the Superior Court, the District Court, the Family Division, the Probate Court, and the AOC ["Administrative Office of the Courts"].
4. The employees share the same personnel rules that govern their hours of employment, their benefit structure, and their manner of classification.
5. The employees currently hired share the same labor grade and step. There are some employees grand-fathered at a higher labor grade.
6. The employees share the same position description. [Joint Exhibit No. 3].
7. The job description for court monitor/assistant states, among other things, that:

Under the direct supervision of the clerk of court or register of probate, this position provides and performs a variety of services associated with the monitoring, logging and recording of testimony in a courtroom, and maintenance of equipment. Provides extensive administrative support to assigned judicial officer. Position processes court cases, enters and updates case data, assists and works with the public, attorneys, law enforcement representatives and other persons having business with the court at the counter and/or in the courtroom. May perform assigned tasks in one or more courts and/or in the office of one or more clerks/registers...

(Joint Exhibit No. 3).

8. Court monitors/assistants are assigned to work in the following divisions of the Judicial Branch: the superior court, family division, and probate court. There are no court monitor/assistants assigned to the district court.
9. Judicial Branch employees, including court monitor/assistants, are subject to the NH Judicial Branch Personnel Rules. (Joint Exhibit No. 2). These rules contain provisions relating various working conditions of all Judicial Branch employees, including, but not limited to, salary schedule, compensation system, annual merit increases, longevity pay, job classifications, appointment of personnel, layoffs, performance evaluations, standards of conduct, disciplinary actions, appeal procedures, leave, holidays, retirement, hours of work and overtime.
10. The primary record taking function, including operating recording equipment and marking exhibits, for legal proceedings conducted by the courts of the Judicial Branch is the same for all court monitor/assistants.
11. In emergency situations, court monitor/assistants can and may be called upon to take a record in a case that is not within their assigned division.
12. All Judicial Branch court monitor/assistants use the same recording equipment and are furnished with the manual "Procedures for Sound Recording Practices in New Hampshire Courts." (Union Exhibit No. 1).
13. Judicial Branch court monitor/assistants receive joint training, as occurred earlier this year, where monitors from both the superior court and family division were present.
14. Judicial Branch court monitor/assistants working in different divisions may on occasion confer with each other on questions that arise in their daily work.
15. A strong self-felt community of interest is shared by all court monitors/assistants employed by the Judicial Branch.
16. On balance, Judicial Branch court monitor/assistants work very similar jobs with common working conditions. The personal style and manner of individual judicial officers does result in day-to-day variations. Objective operational differences between divisions are not at a level warranting separate bargaining units.
17. Court monitor/assistants in the superior court spend most of their work time with their assigned judge or marital master. An exception would be traveling monitors, who fill in for vacationing or otherwise absent monitors in the various courts. It is estimated that on average 55% to 60% of their time is spent recording hearings or trials, and 25% is devoted to assisting their assigned judge or master in various administrative tasks, including typing orders and other correspondence, and preparing jury instructions. The remaining portion of their work time is performing clerical work, such as typing, filing and copying, within the clerk's office of the court where they are assigned. Since some judges do their own typing, the court monitor/assistants

assigned to those judges will proportionally spend more time working in the clerk's office.

18. The family division of the Judicial Branch was first established as a pilot project in 1996 and is now being formally implemented on a county-by-county basis. Currently the division is operating in Rockingham, Sullivan and Grafton counties. Family division court monitor/assistants report to the clerks of court and are assigned cases by them. It is estimated that on average their work time is distributed 50/50 between hearings and performing administrative/clerical tasks in the clerk's office. It is the clerk of court who decides which case will receive a record, but generally all cases involving a final hearing will require the presence of a court monitor. If there are no priority cases scheduled, the court monitor will work in the clerk's office for that day. Judges and masters in the division are not involved in the assignment of court monitors unless they believe a record is needed in a particular case. Under such circumstances, the judge or master will speak with the clerk regarding the specifics of the case.
19. Contrary to a provision with their job description (Joint Exhibit No. 3), court monitors in the family division now rarely provide administrative support to their assigned judicial officer, although there are occasions when this does occur. The division has implemented an electronic dictation system through its' Concord office, but all judicial officers do not currently utilize it.
20. Currently there is one court monitor/assistant for the probate court. It is estimated that she works 70% of her time in court and the remainder in the office of the register of probate where she happens to be that day. She is usually working in superior court buildings, but not always. The probate court administrator, who works at the AOC in Concord, issues daily assignments to her that typically covers a three-week period. Over her 7 years of employment, she has had one occasion in which she took a record in a superior court case and a few occasions in the family division.
21. Court monitor assistants currently assigned to a marital master in the superior court will be transferred to the family division upon the ongoing expansion of the family division into their respective county. This reflects the transferability of court monitor assistants between divisions of the Judicial Branch.
22. The line of supervisory authority (or "chain of command") varies by division. Court monitor/assistants in the superior court technically report to the respective clerk of court in the county where they are assigned, but are also assigned to a judge or master, with whom they work and receive supervision on a daily basis. The judge or master determines when the court monitor/assistant is available to work in the clerk's office. A supervisory judge for each superior court supervises each clerk of court, who then reports to the Administrative Judge of the Superior Court, currently Chief Justice Robert Lynn.

23. Court monitor/assistants in the family division are assigned to a particular court and report to the family division clerk of court at that locale. The family division clerks fall under the supervision of two statewide family division administrators. The family division administrators report to the Administrative Judge of the Family Division, currently Judge Edwin Kelly.
24. The court monitor/assistant for the probate court is given assignments by the probate court administrator, and is supervised on a daily basis by the register of probate, or deputy register of probate, wherever she happens to be on a given day. The registers of probate report to the Administrative Judge of the Probate Court, currently Judge John Maher.
25. Pursuant to New Hampshire Supreme Court Rule 54, "the responsibilities of the administrative judge include...the employment and discharge of all personnel in accordance with budgetary and personnel rules and regulations and such policies as have been established by the supreme court..."
26. The administrative judges do not hold any supervisory authority over the respective employees, including court monitor/assistants, in the other divisions of the Judicial Branch.
27. The next level in the chain of command is the administrative council. The administrative council is comprised of each administrative judge and the Director of the AOC.
28. In accordance with Pt. 2, Article 73-a of the New Hampshire Constitution, the chief justice of the Supreme Court is the administrative head of all the courts.

### DECISION AND ORDER

#### JURISDICTION

In accordance with RSA 273-A:8 I, "the board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10." N.H. REV. STAT. ANN. 273-A:8 I (1999). Moreover, "the PELRB is given broad subject matter jurisdiction to determine and certify bargaining units to enforce the provisions of that chapter." *Appeal of University System of New Hampshire*, 131 N.H. 368, 370 (1988)(citation omitted). 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).

#### DISCUSSION

The formation of a bargaining unit is governed by 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. N.H. REV. STAT. ANN. 273-A:8 I (1999). 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 the same historic craft or profession; [and]
- (d) Employees functioning within the same organizational unit.”

*Id.* Board regulations establish additional factors to be considered in determining appropriate bargaining units, specifically referencing:

- (1) A common geographic location of the proposed unit;
- (2) The presence of :
  - (a) Common work rules and personnel practices’
  - (b) Common salary and fringe benefit structures; and
- (3) The self-felt community of interest among employees.

N.H. CODE ADMIN. R. PUB 302.02 (b). As the New Hampshire Supreme Court has previously stated, “the principal consideration in determining an appropriate bargaining unit is whether there exists a community of interest ‘in working conditions such that it is reasonable for the employees to negotiate jointly.’” *Appeal of University System of N.H.*, 131 N.H. 368, 371 (1988) (citations omitted). “In construing ‘community of interest,’ [the Court] consider[s] such factors as skills, duties, working conditions and benefits of the employees, the organizational structures of the employer, and the extent to which the work is integrated.” *Id.* at 372 (citation omitted).

In applying these criteria to the facts at hand, I find that a sufficient community of interest exists among all court monitor/assistants to form a single bargaining unit and that it is reasonable for these employees to negotiate as a single unit with the Judicial Branch. Given that the court monitors/assistants all share the same salary and fringe benefit package, are subject to common work rules and personnel practices, and essentially perform the same job function for the Judicial Branch, albeit within different legal forums, compelling facts are present to support the establishment of a single unit. A strong self-felt community of interest also exists among these employees, and reasonably so, based upon their common training, knowledge, skills, and responsibilities. The knowledge and skills of the court monitor/assistants are transferable within the varied proceedings conducted by the Judicial Branch, and under emergency or other special circumstances a court monitor/assistant from one division may be utilized in another. It is further noteworthy that all court monitor/assistants, whether working in the superior court, family division or probate court, share the same job description and a procedure manual for conducting sound recordings in the New Hampshire courts. They also have a common employer, namely the Judicial Branch, and common supervision and oversight at the levels of the administrative council and the Chief Justice of the New Hampshire Supreme Court.

The record reflects that there are differences in lines of supervision for court monitor/assistants. The superior court, family division and probate court each have a separate administrative judge who oversees the operation and staff of their respective division. The

administrative judge for one division does not have supervisory authority over the employees in another division. Moreover, whereas judges or marital masters provide the majority of supervision to court monitor/assistants in the superior court, supervision in the family division is primarily provided by the clerks of court. Testimony also established that there are modest differences between divisions in actual time spent recording proceedings. While it is estimated that the court monitor in the probate court devotes 70% of her time to recording responsibilities, those in the superior court and family division are at 60% and 50%, respectively. Another difference is that with some exceptions court monitor/assistants in the superior court continue to provide administrative support to their assigned judge or master, whereas those in the family division now perform little, if any, such work. As a result, family division court monitor/assistants tend to spend considerably more time working in their respective clerk's office than those in the superior court.

Although these differences exist, they are not so significant or unique as to generate a need for separate bargaining units. The primary record taking function is shared by all court monitor/assistants, regardless of the actual amount of recording they perform. They do have varying degrees of administrative support responsibilities to either a judicial officer or their respective clerk of court, but the fact remains that they all carry some portion of these responsibilities subject to their principle duty of record taking. Even though court monitor/assistants in the superior court are assigned to a judge or marital master, they report to the clerk's office for the remainder of their work time, just as those assigned to the family division. Although court monitor/assistants in the family division work in the clerk's office to a greater extent, since some judges in the superior court do their own typing, the court monitor/assistants assigned to those judges will spend a comparable amount of time working in the clerk's office. In this regard, differences in the personal style and manner of individual judges can understandably result in varied daily circumstances for court monitor/assistants, but this does not reflect fundamentally different jobs or work. The Board, in determining the appropriate unit, considers whether there is evidence of common, objective working conditions such that a sufficient community of interest exists.

While the respective administrative judges have authority and oversight over the employees within their divisions, the bulk of working conditions for all court monitor/assistants are governed by the personnel rules of the Judicial Branch. Based upon New Hampshire Supreme Court Rule 54(5), which provides, in pertinent part, that "the responsibilities of the administrative judge include...the employment and discharge of all personnel in accordance with budgetary and personnel rules and regulations and such policies as have been established by the supreme court..." the administrative judges themselves are subject to these same personnel rules in the manner in which they exercise their supervisory authority. The court monitor/assistants are therefore ultimately functioning within the same organizational unit, namely the Judicial Branch.

The Judicial Branch asserts that the appropriate unit should be by court division, based upon the common supervision and organizational unit at that level. However, a sole unit of court monitors/assistants for the superior court would lead to undue fragmentation, where multiple bargaining units negotiate separately despite sharing common working conditions and work responsibilities for the public employer. Fragmentation of a prospective unit is generally to be

avoided since multiple bargaining units can lead to jurisdictional disputes over the assignment of work, separate seniority lists that restrict the movement of employees between jobs, disparate treatment of employees doing the same or similar jobs, and increased costs in negotiating and applying multiple contracts. Conversely, formation of a broader unit, if appropriate under the law, can result in lower costs and increased efficiency.

Pursuant to Pub 302.02(c)(1), "...the board shall also consider...[t]he effect of forming any particular bargaining unit on the efficiency of government operations as contemplated in RSA 273-A:1, XI..." In the case at hand, it is reasonable, and more efficient, for one unit to be established. Even though RSA 273-A:9-a (Supp. 2004) establishes "a single bargaining committee comprised of all interested bargaining units" to negotiate with the unified court system on cost items and terms and conditions of employment, it also provides that "[n]egotiations regarding terms and conditions unique to individual bargaining units shall be negotiated individually with the representatives of those units." There are simply no terms and conditions of employment so unique to the court monitor/assistants of the superior court to justify individual negotiations for this group of employees, while excluding the court monitor/assistants working elsewhere within the Judicial Branch. Furthermore, while RSA 273-A:9-a (Supp. 2004) permits a multiplicity of bargaining units to be formed within the Judicial Branch, the criteria for determining the appropriate bargaining unit under RSA 273-A:8 and Pub 302.02 (b), as described above, must still be applied. Given the significant community of interest that is shared among all court monitor/assistants of the Judicial Branch, and in the interest of efficient government operations, the Board's certification of a unit comprised solely of court monitor/assistants in the superior court would be contrary to law.

A bargaining unit consisting of all full time court monitor/assistants employed by the Judicial Branch is appropriate under the circumstances. Accordingly, the Union's petition is granted and the scheduling of a representation election is directed to proceed forthwith.

So ordered.

Signed this 29<sup>th</sup> day of December, 2005.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:  
Lorri Hayes, Esq.  
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