



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657, Barnstead Police & Fire		*	
Employees		*	
	Petitioner	*	Case No. G-0034-1
	v.	*	
Town of Barnstead		*	Decision No. 2006-227
	Respondent	*	
		*	

APPEARANCES

Representing Petitioners:

Daniel A. Cocuzzo, Esq.,  
AFSCME Council 93, Boston, Massachusetts

Representing Town of Barnstead:

Mark T. Broth, Esq.  
Devine, Millimet & Branch PA, Manchester, New Hampshire

BACKGROUND

On April 19, 2006 AFSCME Local 3657, Barnstead Police and Fire Employees ("AFSCME") filed a petition for certification seeking to create a new bargaining unit comprised of certain specified positions of the Barnstead Police and Fire Departments. On May 4, 2006 the Town of Barnstead filed its exceptions and objections to the petition, asserting that Barnstead Police and Fire Department employees lack the requisite community of interest required under RSA 273-A:8, I.

Procedurally this matter was scheduled for hearing several times and then continued first by an assented to motion filed by AFSCME and then as a result of an assented to motion filed by the Town. Ultimately the parties agreed to submit this matter for decision pursuant to an agreed upon structuring order approved by the PELRB on August 31, 2006. Pursuant to this scheduling order the parties filed a Joint Stipulation of Facts on September 29, 2006. The Town filed its

brief on November 3, 2006 as required by the structuring order. AFSCME did not submit its brief until November 13, 2006, ten days after the required deadline. On November 27, 2006 AFSCME filed a Motion to Extend Time to file its brief.

The parties' Stipulated Facts are set forth as Findings of Fact 1 and 3-18.

#### FINDINGS OF FACT

1. The Town of Barnstead is a public employer within the meaning of RSA 273-A:1, X.
2. AFSCME Local 3657 is an employee organization that seeks to represent employees of the Town of Barnstead for purposes of collective bargaining pursuant to RSA 273-A.
3. AFSCME Local 3657 filed a Petition for Certification proposing a bargaining unit consisting of eleven individuals: five Firefighter-Emergency Medical Technicians ("Firefighter/EMTs"); one Firefighter-Paramedic; three Patrolmen; one Corporal; and one Sergeant. The Union has identified the positions of Police Chief and Fire Chief as excluded from the proposed bargaining unit.
4. The Firefighter/EMTs and Firefighter-Paramedic are members of the Town's Fire Department ("the Fire Department employees"). The Patrolmen, Corporal and Sergeant are members of the Town's Police Department ("the Police Department employees").
5. The Fire Department provides fire suppression, rescue and ambulance services. The Fire Department employees provide first responder, advanced life support to ill or injured persons, and fire suppression. In a medical emergency, they are responsible for patient care, triage, treatment, [and] transport[ation]. More specifically, they must assess the extent of [the person's] illness or injury, document[] [the] patient[' s] vital signs, and accurately record[] all findings, care and services. The Fire Department employees must provide[] emergency [medical] care in accordance with established medical protocol's and practices of the appropriate service area hospital or treating physician or health care professional.
6. The Fire Department employees are also required to perform fire suppression services, including: 1) driv[ing] and operat[ing] pumpers, tankers, aerial ladders, boats and other motorized equipment; 2) mak[ing] openings in burning buildings for ventilation and entrance; 3) rescu[ing] persons form (sic) burning buildings and wrecked motor vehicles; 4) lay[ing] and connect[ing] hose lines and operat[ing] nozzles directing water streams; 5) operat[ing] portable fire extinguishers; and 6) perform[ing] salvage operations at the scene of an incident.

7. The Fire Department employees provide rescue services in situations such as vehicle accidents, below grade rescue, building collapse, [and] water/ice rescue. The Fire Department employees are responsible for the recording of all information pertaining to blasting, burning, space heaters, fireworks, and oil, burner permits. Moreover, they must perform[] hazardous materials incident mitigation activities. They must also [c]onduct[] fire inspections and perform[] building familiarization.
8. The Fire Department employees are unarmed and do not have arrest authority.
9. The Fire Department employees are supervised by Fire Chief George R. Krause, II ("Chief Krause"), who reports directly to the Board of Selectmen. The Fire Department employees are required to follow not only the Town's policies, but also the Fire Department's rules and regulations. Chief Krause assist[s] the Board of Selectmen in the hiring, disciplining, and firing of the Fire Department employees. He also informally evaluate[s] the Fire Department employees.
10. The Fire Department employees work out of either Parade Fire Station, 305 Parade Road, Barnstead, New Hampshire 03218 or Center Station, 106 South Barnstead, Center Barnstead, New Hampshire 03225. The Fire Department employees are typically scheduled to work forty-eight (48) hours per week. They wear uniforms, which designate them as employees of the Fire Department, and use protective clothing as necessary.
11. The Fire Department employees must satisfy the State of New Hampshire's firefighter and EMT training requirements. *See* RSA 21-P:29 (firefighter training); RSA 153-A:11 (emergency medical care providers training). They must also hold current [a] Commercial Motor Vehicle Operators license with tank and air brake endorsement issued by the state of New Hampshire. Further, they are required to participate in drills and training courses involving "firefighting theory and practices" and "emergency medical updates."
12. "The Police Department is engaged in law enforcement, including, but not limited to, performing patrol, arrest and prosecutorial functions."
13. Patrolmen are responsible for "patrol, investigations, traffic control, and a variety of other duties designed to preserve peace and order." Patrolmen must "also carr[y] out numerous functions of community service and emergency assistance to the residents and transients of the town." More specifically, patrolmen perform the following functions:
  - a. [c ]heck[] overall security of vacant homes and buildings, periodically check[] business establishments and public places for violations of the law;
  - b. [c]onfront[] suspicious persons and situations;

- c. [n]egotiate settlements between emotionally upset and often irrational persons involved in domestic disputes, drunkenness, unlawful entries, larcenies, vandalisms, assaults, etc.;
- d. [r]eceive[] dispatch orders and respond[] to calls for service, emergency situations, and crimes;
- e. [t]ake charge of crime scenes, conduct[] appropriate investigations;
- f. [e ]xercise[] knowledge *of* state, federal, and local laws as well as Supreme Court decisions in determining legal justification for arrest, search and seizure, investigations, custodial situations, etc.;
- g. [d]irect[] activities at accident and disaster scenes, render[] first aid to victims and restore[] traffic to normal;
- h. [i]nvestigate[] traffic accidents to determine cause;
- i. [s]top[] motor vehicles where appropriate;
- j. [d]etect[] and apprehend[] DWI offenders;
- k. [i]nvestigate[] crimes and/or suspected criminal acts to identify, locate, apprehend, and prepare for prosecution those persons charged with committing crimes;
- l. [p]erform[] activities, utilizing specialized skills and equipment for the purpose *of* developing, collecting, and processing legal supporting evidence and information relating to criminal activities, examines crime scenes, collects physical evidence, interviews witnesses and suspects;
- m. [d]etermine[] the extent *of* criminal activity and the need for further police assistance;
- n. [p]repare[] written reports *of* the activities, investigations and arrests;
- o. [m]aintain[] a log *of* activities and any intelligence information, which comes to the officers' attention;
- p. [w]ork[] with other law enforcement officers and agencies to facilitate the flow of information between other police agencies within the state and nation;
- q. [c]onduct[] foHow-up investigations *of* unsolved crimes;
- r. [t]estify in court;
- s. [e ]ducate(J the public with regard to criminal law and related statutes;
- t. [c]onduct[] safety and crime prevention programs;
- u. [understand] modern police science techniques, methods and procedures; [and]
- v. utilize self-defense techniques and firearms.

13. The Corporal and Sergeant perform all of the duties as the Patrolmen.

14. Additionally, the Corporal performs the following duties, including but not limited to: 1) reviews call reports; 2) handles duties delegated from the Sergeant; 3) performs background checks; and 4) maintains the evidence locker. The Sergeant also performs the following duties, including but not limited to: 1) reviews the Patrolmen's investigative and call reports; 2) handles prosecutions; and 3) follow-ups on felony investigations.

15. The Police Department employees are supervised by Police Chief Kenneth A. Borgia ("Chief Borgia"), who reports directly to the Board of Selectmen. The Police Department employees are required to follow not only the Town's policies, but also the Police Department's Standard Operating Procedures. Chief Borgia assist[s] the Board of Selectmen in the hiring, disciplining, and firing of the Police Department employees. He also informally evaluate[s] the Police Department employees.
16. The Police Department employees work out of 119 South Barnstead Road, Center Barnstead, New Hampshire 03225. On occasion, the Police Department employees take meal breaks at a fire station. The Police Department employees are typically scheduled to work forty hours per week. They wear uniforms, which designate them as police officers.
17. The Police Department employees must satisfy the State of New Hampshire's police training requirements. They also must:
  - a. [p]ass an NCIC fingerprint check;
  - b. [p]ass a character and background check;
  - c. [p]ass a medical and psychological exam;
  - d. [p]ass a polygraph exam;
  - e. [n]ever have had a felony conviction in any state or country which has not been pardoned or annulled;
  - f. [n]ot have multiple misdemeanor convictions so as to indicate a disregard for the law;
  - g. [n]ot have a misdemeanor conviction which has not been pardoned or annulled, and which is serious enough to cast doubt on his/her fitness to be a police employee; [and]
  - h. [n]ot be dishonorably discharged from the military services.
18. Police and fire personnel regularly interact in performing their respective duties.

### DECISION

#### JURISDICTION

The PELRB has jurisdiction over petitions to determine public employee bargaining units and certify exclusive representatives pursuant to the provisions of RSA 273-A:8 and 10.

#### DISCUSSION

AFSCME's motion for extension of time to file its brief is granted. The other issue in this case is whether there is sufficient evidence to find a community of interest among the members of the proposed bargaining unit, which consists of police and fire department

employees.

The criteria applicable to the determination of bargaining units are set forth in RSA 273-A:8 and N.H. Admin. Rule Pub. 302.02. RSA 273-A:8, I provides:

In making its determination the board should take into consideration the principle of community of interest. The 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;
- (d) Employees functioning within the same organizational unit.

Pub 302.02 provides:

- (a) An appropriate bargaining unit shall be characterized by the existence of a community of interest shared by its members.
- (b) In determining the appropriate bargaining unit, the board shall consider the following as evidence of a community of interest, in addition to the elements set out in RSA 273-A:8, I (a) through (d):
  - (1) A common geographic location of the proposed unit;
  - (2) The presence of:
    - a. Common work rules and personnel practices; and
    - b. Common salary and fringe benefit structures; and
  - (3) The self-felt community of interest among employees.

In the past, the PELRB has approved proposed bargaining units comprised of police and fire department employees. See Gilmanton Town Employees Unit v. Town of Gilmanton, New Hampshire, PELRB Decision No. 90-92; American Federation of State, County and Municipal Employees, AFL-CIO, Council No. 68 (Police and Fire Dept. Employees) and Town of Plymouth, New Hampshire Board of Selectmen, PELRB Decision No. 82-13. The PELRB has also approved proposed bargaining units comprised of employees from different departments. See Teamsters Local 633 of New Hampshire v. Town of Milton, PELRB Decision No. 96-055 (combining police department secretary, public works department secretary, mechanic, truck driver, accounts payable clerk, full-time landfill operator, part-time landfill operator but excluding police sergeant and four police officers due to insufficient community of interest).

At least two PELRB approved bargaining units comprised of employees from different departments were successfully challenged on appeal due to a lack of community of interest. Appeal of Weare, Case No. 92-395, slip op., (N.H., Sept. 15, 1993)(PELRB reversed on appeal upon a determination that the PELRB, which included a police officer in the new bargaining unit, "erred in determining that the members of the proposed bargaining group shared a community of interest."); Appeal of Town of Newport, 140 N.H. 343 (1995)(on

appeal fire lieutenants and fire chief deemed ineligible for inclusion in the bargaining unit due to insufficient community of interest.)

The PELRB has also rejected proposed bargaining units comprised of employees from different departments due to insufficient evidence as to community of interest. See AFSCME Council 93, Local 1444 v. Town of Lancaster, PELRB Decision No. 2004-159 (involving a proposed bargaining unit of Highway, Water & Sewer, Fire, Transfer Station, Police, Town Recreation, Town Offices, and Library); SEIU Local 1984 (Bristol Town Employees) and Town of Bristol, PELRB Decision No. 2003-034 (proposed unit of all full time and permanent part-time employees of the Town of Bristol).

The statute does not authorize the PELRB to employ a different or lower community of interest standard in situations where the overall number of employees in particular departments is low and banding together employees from different departments is necessary in order to meet the ten employee requirement imposed by RSA 273-A:8, I (d). On the other hand, neither the statute, nor PELRB decisions, nor New Hampshire Supreme Court decisions bar, as a matter of law, the combination of employees from different departments (such as police and fire) provided the other requirements of the statute are met.

The decisions cited establish that the community of interest showing is a fact intensive process and must be determined on a case by case basis. As evidenced by the previously cited decisions, testimony from competent witnesses can be particularly important to the process when evaluating community of interest. A recent PELRB decision illustrates the point. In AFSCME Council 93, Local 1444 v. Town of Lancaster, PELRB Decision No. 2004-159, the hearing officer stated, concerning the record, that:

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.

In the present case the only evidence submitted to support the requisite community of interest is the September 29, 2006 Joint Stipulation. This stipulation is contained in Findings of Fact 1 and 3-18. (The parties also submitted the affidavits and exhibits that formed the basis for the Joint Stipulation.) For the most part the stipulation is a recitation of the job duties, responsibilities, and activities of the involved police and fire department employees and the structure of the two separate departments. If anything, the Joint Stipulation highlights the distinctions and differences between employees of the two departments and the

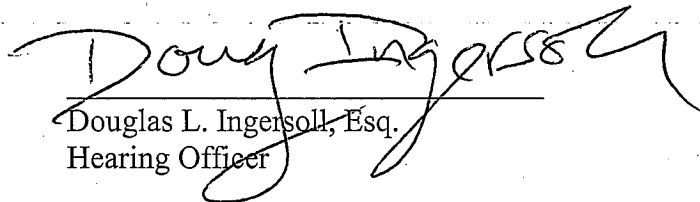
reasons why there is no community of interest between employees of the two departments.

The stipulations that “[o]n occasion, the Police Department employees take meal breaks at a fire station” and “[p]olice and fire personnel regularly interact in performing their respective duties” (Findings of Fact 16 and 18), standing alone, or in conjunction with the rest of the stipulations, are not enough to establish the requisite community of interest. AFSCME’s suggestion that the mere filing of the petition for certification is a sufficient showing of a “self felt” community of interest is likewise insufficient.

AFSCME’s reliance on the 1982 Plymouth case (PELRB Decision No. 82-13) is misplaced. The Plymouth decision is not controlling for the reasons already discussed. Each case must be decided on its own merits and the requisite community of interest must be proven. Unlike the Plymouth (and similar) cases, AFSCME did not present any testimony on the issue. This is not to say that testimony is always required in cases involving community of interest or that community of interest will always be proven in the event testimony is given. However, in this case the stipulated record is insufficient to prove the requisite community of interest.

Accordingly, AFSCME’s petition is dismissed.

So ordered.  
December 18, 2006.

  
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Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

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