



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hampstead Police Union, NEPBA Local 37

Petitioner

and

Town of Hampstead

Respondent

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Case No. P-0796

Decision No. 2008-071

APPEARANCES

Representing New England Police Benevolent Association, Local 37:
Peter J. Perroni, Esq.
Nolan Perroni Harrington LLP, Lowell, Massachusetts

Representing Town of Hampstead:
Peter C. Phillips, Esq.
Soule, Leslie, Kidder, Sayward & Loughman PLLC, Salem, New Hampshire

BACKGROUND

The New England Police Benevolent Association, Local 37 ("Union") filed a written majority authorization ("WMA") certification petition pursuant to RSA 273-A:10, IX on November 16, 2007. NEPBA seeks to certify a unit composed of Dispatcher-Clerk, Full-time Patrolman, Regular Part-time Patrolman, Sergeant, and Animal-Control Officer. The Union's WMA petition preceded the Board's adoption of Pub 301.05 relative to WMA proceedings.

On January 8, 2008 the Town of Hampstead filed exceptions. The Town asserted that the signature cards submitted by the Union failed to comply with Pub 301.05, that Sergeants are supervisory employees within the meaning of RSA 273-A:8, II, and that the Animal-Control Officer and Dispatcher/Clerks do not share a sufficient community of interest with the sworn police officers. The Town filed a supplement on January 10, 2008 in which it argued that the Dispatcher/Clerks serve as confidential secretaries to the Chief of Police and must be excluded by application of RSA 273-A:1, IX.

The undersigned hearing officer conducted a hearing on the petition on January 25, 2008 at which time the parties presented testimony and submitted exhibits. Prior to the commencement of the hearing, the Union withdrew its petition for the inclusion of the Animal-Control Officer in the proposed bargaining unit. The parties also stipulated that should the board determine that a proper bargaining unit exists, the representation questions will be determined by a Pub 303 election, and not through the Pub 301.05 WMA process. In the event that the board determined the existence of a bargaining unit, the parties further agreed that the signature cards submitted with the original WMA petition would serve, without challenge, as the basis for a determination of sufficient interest pursuant to and RSA 273-A:10, I (a) and Pub 301.01(k). The parties filed post-hearing briefs on February 26, 2008 and the record is now closed.

FINDINGS OF FACT

1. The Town of Hampstead (hereinafter the "Town") is a municipal corporation duly organized and existing under the laws of the State of New Hampshire.
2. The Town is a "public employer" as that term is defined in RSA 273-A:1, IX.
3. The New England Police Benevolent Association, Local 37 is an employee organization within the meaning of RSA 273-A.
4. The Union seeks to represent certain employees of the Town of Hampstead Police Department for purposes of collective bargaining pursuant to RSA 273-A:1, XII.
5. The Town's executive branch is comprised of a three member Board of Selectmen.
6. The Town's police department is located in a single building.
7. The department's procedures, including job position descriptions, are recorded in a manual entitled "Hampstead Police Department Procedures" that was last amended April 10, 2000. (Jt. Ex. 1).
8. Since on or about August, 2007, the Town's police department has been staffed by a single Chief, one Lieutenant, two Sergeants, four full-time Patrol Officers, eleven part-time Patrol Officers, two Dispatcher/Clerks, and one Animal Control Officer.

9. Two of the part-time Patrol Officers are certified as, and are eligible to serve as, full-time officers, but they are currently scheduled on a part-time basis.
10. Prior to August, 2007, the department's roster did not include any Lieutenant position and contained only a single Sergeant position. Upon the implementation of the new departmental organization, the incumbent Sergeant was promoted to the newly created Lieutenant position. Two full-time Patrol Officers were then promoted to Sergeant.
11. The Chief of Police is an elected part-time position, and holds the ultimate departmental authority on all budgetary, disciplinary and personnel matters.
12. The Chief is responsible to the Board of Selectmen with regard to the administration of the police department.
13. The Chief retains the sole departmental authority to issue discipline. Discipline for misconduct may range from a verbal or written warning, to a suspension or discharge.
14. The Lieutenant is responsible for the day to day administration of the department. Primary responsibilities include the scheduling and overall supervision of subordinate Sergeants and Patrol Officers.
15. The Lieutenant serves as a conduit between the Police Sergeants and the Chief with regard to any disciplinary matters that may arise. If a Sergeant believes that a Patrol Officer engaged in misconduct, the Sergeant will document the incident and report it to the Lieutenant who will then forward the matter to the Chief for a final determination of whether disciplinary action is warranted.
16. The Lieutenant is responsible for assigning personnel to scheduled shifts. Shifts are scheduled in eight week blocks.
17. A member of the department is not able to determine exactly what shifts he/she may be scheduled for beyond the eight weeks currently scheduled.
18. There are a total of three shifts scheduled per day, with the exception of a fourth shift which is regularly scheduled for every Friday, Saturday, and at least one weekday.
19. The fourth shift is typically reserved for a part-time Patrol Officer.
20. In order to schedule in advance the shifts reserved for part-time Patrol Officers in each eight week block, the Lieutenant takes into consideration the availability of each part-time Patrol Officer for that future time period, as well as the officer's past reliability.
21. The two Sergeants are responsible for the immediate supervision over Patrol Officers' routine matters and the implementation of all orders from superior officers. Jt. Ex. 1 at 28.

22. Sergeants, unlike the Chief or the Lieutenant, are also expected to respond when necessary to citizens' calls and to participate in regular patrols in the field. In the absence of the Chief or Lieutenant, the Sergeant on duty serves as the officer in charge, i.e. shift commander. A Patrol Officer will serve as the officer in charge of a shift in the absence of the Chief, Lieutenant, or either Sergeant.
23. Sergeants do not have any authority to issue discipline in response to Patrol Officers' misconduct. Sergeants do have a duty to document any misconduct they witness and to report this misconduct to a superior officer.
24. Prior to the August, 2007, reorganization of the department's command structure, the then Sergeant drafted two written warnings and one memorialization of a verbal warning. Town Exs. 1, 2, 3. All three warnings included a signatory line for the Chief. The Sergeant signed one of the written warnings as well as the written memorialization of the verbal warning. The Chief ultimately reviewed each warning drafted by the Sergeant.
25. The Board of Selectmen requires bi-annual evaluations for all full-time police department employees.
26. The evaluations have an impact on salary step increases for full-time department personnel.
27. Prior to the August, 2007, departmental reorganization, the Chief completed all bi-annual evaluations.
28. The job duties for a Sergeant, as reflected in the procedures manual, include the completion of performance reviews for subordinate patrol officers.
29. A performance review would then be reviewed, and taken under consideration, by the superior officer who is responsible for completing each full-time employee's bi-annual evaluation.
30. In practice, the Sergeant did not complete any performance reviews for Patrol Officers from 2000 through his promotion to Lieutenant in August, 2007.
31. No performance reviews or bi-annual evaluations have been completed since the August, 2007, departmental reorganization.
32. The Lieutenant, rather than the Chief, will be responsible for completing the next round of bi-annual evaluations.
33. There are two classes of Patrol Officers, full-time certified and part-time certified. Full-time certified officers are certified to work more than 1300 hours annually, whereas part-time officers are precluded from working more than 1300 annual hours.

34. A Patrol Officer serves as the officer in charge of a shift in the absence of the Chief, Lieutenant, or either Sergeant.
35. Two part-time Patrol Officers, Leo Beauchamp and Daniel Jackman, are certified to serve as full-time officers, in that they are eligible to work more than 1300 hours annually. Both officers' official employment status remains as a part-time patrol officer.
36. The parties stipulated that Officers Beauchamp and Jackman are regularly scheduled part-time patrol officers.
37. Department employees remain on a probationary status during their initial year of employment.
38. Officer Jackman was hired in July, 2007, and will remain a probationary employee until July, 2008.
39. The two police Dispatcher/Clerks are regularly scheduled on alternating days, Monday through Friday, 9 a.m – 4 p.m.
40. The Dispatcher/Clerks' work station is at the front lobby of the police station where they are expected to greet the public. They wear t-shirts that indicate they are police dispatchers.
41. The Dispatcher/Clerks are responsible for staffing the police department's public and private telephone lines.
42. The Dispatcher/Clerks handle the administration of all police department radio communications, including the dispatch of officers in response to a call, as well as the facilitation of a response to an officer's request for assistance in the field.
43. The Dispatcher/Clerks are responsible for all of the department's clerical duties.
44. The Dispatcher/Clerks complete all of the Chief's typing for him. In general, should a document drafted by the Chief need to be type-written, the Chief first hand writes the document and a Dispatcher/Clerk subsequently re-types the text.
45. The subject matter of the documents type-written for the Chief by the Dispatcher/Clerks includes, but is not limited to, departmental purchase receipts, routine departmental correspondence, documentation of disciplinary action, personnel matters including employee compensation, correspondence to the board of selectmen, and correspondence to the Town's legal counsel.
46. Employee evaluations are not type-written by the Dispatcher/Clerks.

47. The Chief retains sole possession and control over of the department's personnel files.

DECISION AND ORDER

Jurisdiction

The PELRB has jurisdiction over certification petitions involving public employers, public employees, and employee organizations pursuant to RSA 273-A:8, I.

Discussion

The threshold determination is whether the Sergeants must be excluded from bargaining unit membership pursuant to RSA 273-A:8, II. RSA 273-A:8, II provides that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." The PELRB has "broad subject matter jurisdiction to determine and certify bargaining units to enforce the provisions of that chapter (RSA 273-A)." *Appeal of SAU #21*, 126 N.H. 95, 97 (1985).

Analysis of the supervisory status issue is guided in part by the standard articulated in *Appeal of East Derry Fire Precinct*, 137 NH 607, 611 (1993), which provides that "[a] supervisory relationship exists when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion." Important factors to consider include an "employee's authority to evaluate other employees, the employee's supervisory role, and the employee's disciplinary authority." *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999) (citing *Appeal of East Derry Fire Precinct*, 137 N.H. at 610 (1993) (Supreme Court excluded the position of sergeant from a bargaining unit where the "sergeant possesses authority to evaluate the other officers, as well as disciplinary authority to issue verbal or written warnings and make recommendations to the chief...[the sergeant] also oversees the patrol officers and performs shift scheduling").

Also, "some employees performing supervisory functions in accordance with professional norms will not be vested with the 'supervisory authority involving the significant exercise of discretion' described by RSA 273-A:8, II." *Appeal of East Derry Fire Precinct*, 137 N.H. at 611.

Supervisory employees are generally separated from rank and file employees because there is "a strong potential for a conflict of interest to arise between the two groups." *Appeal of Univ. System of New Hampshire*, 131 N.H. 368, 376 (1988). Such conflicts between the two groups may arise "because of the differing duties and relationships which characterize each group." *Appeal of East Derry Fire Precinct* at 610. It is therefore proper to examine the degree of significance of the exercise of discretion as well as the propensity to create conflict within the bargaining unit because of the differing duties and relationships. See *Londonderry Executive Employee Association v. Town of Londonderry*, PELRB Decision No. 2001-118.

In this case, the Sergeants do exercise some level of supervisory control in the form of 1) evaluation of subordinate officers, 2) an obligation to report misconduct for a disciplinary

determination, as well as 3) the general exercise of supervision over patrol officers in their routine duties. However, a Sergeant's supervisory control does not rise to the level of significant exercise of discretion that would mandate exclusion from the bargaining unit.

Sergeants have an explicit duty to submit reports to a superior officer, either annually or upon request, that review the performance of subordinate patrol officers. *Jt. Ex. 1*, at 28. Despite the existence of this duty since at least the last revision to the department's procedures manual in April, 2000, the duty was not enforced for the incumbent Sergeant from 2000 through his promotion to Lieutenant in August, 2007. This lack of active enforcement does not necessarily bar consideration of the duty within the context of an evaluation of supervisory status. *Appeal of University System of N.H.*, 131 N.H. 368, 376 (1988).

Ultimately, even if the Sergeants are required to conduct reviews in the future, the nature of the review described in testimonial evidence, as well as the procedures manual, is insufficient to constitute supervisory authority involving the significant exercise of discretion. Specifically, the subject matter of the reports is limited to "[r]eview[ing] performance of all officers to insure that they are properly carrying out their duties, are neat in appearance, keeping cruisers clean and with an adequate supply of forms and equipment, and are aware of their public relations responsibility." *Jt. Ex. 1* at 28. Although these reports may be considered by a superior officer for a determination of a Patrol Officer's merit pay increase, there was no evidence that the reports will play any role in a Patrol Officer's employment status, i.e. hiring, termination, promotion, suspension. *C.f. Appeal of East Derry Fire Precinct* at 611; see also *Tilton Police Union, NEPBA, Local 29 v. Town of Tilton*, PELRB Decision No. 2007-100.

The Sergeants play a limited role in the disciplinary process for Patrol Officer misconduct. The Chief retains sole and final departmental authority to issue discipline. The Sergeants do not have any express authority to unilaterally issue any level of discipline. Instead, the Sergeants are obligated to document any Patrol-Officer misconduct that they witness and report this misconduct to the Lieutenant, who then forwards the matter to the Chief for a final determination as to whether discipline is warranted.

The Town's three examples of past disciplinary notices drafted by a Sergeant fail to raise the present Sergeants' disciplinary authority to the level that would constitute supervisory authority involving the significant exercise of discretion. Most significantly, all three disciplinary notices were drafted prior to the August, 2007, departmental reorganization. Prior to this reorganization, the incumbent Sergeant served as the single superior officer and, apart from the Chief himself, played a significant role in the general supervision of the department as the second in command. In contrast, the department's current structure includes a Lieutenant position that is quite comparable in authority and role to the pre-reorganization Sergeant. As a result, the current Sergeants do not possess the implicit authority that attaches to a second in command position. The evidence presented fails to support the conclusion that the current Sergeants will be expected to routinely issue disciplinary notices comparable to those drafted by the previous Sergeant. Furthermore, all three disciplinary notices were prepared for the Chief's signature and were subject to his final approval upon his review.

The role of the Sergeants' in departmental supervision is more in "accordance with professional norms" rather than an example of "supervisory authority involving the significant exercise of discretion." *East Derry Fire District*, 137 N.H. at 611. Importantly, the Sergeants are charged with enforcing the policies and procedures established by their superiors, and do not have the authority to independently initiate, or eliminate, a policy or procedure. Additionally, the Sergeants do not schedule Patrol Officers. C.f. *Appeal of Town of Stratham*, 144 N.H. at 432. While Sergeants are expected to assume command in the absence of the Chief or Lieutenant, a Patrol Officer is expected to do the same during the shifts where there is no superior officer present.

The remaining issues are 1) whether the Dispatcher/Clerks have a sufficient community of interest so as to be included in the proposed bargaining unit, and 2) whether the Dispatcher/Clerks' clerical work precludes them from bargaining unit membership because it qualifies as a confidential relationship.

In general, the PELRB "should take into consideration the principle of community of interest" when determining the appropriate bargaining unit. RSA 273-A:8, I. Some criteria relevant to the community of interest include whether employees have the same conditions of employment, have a history of workable and acceptable collective negotiations, are in the same historic craft of profession, and function in the same organizational unit. RSA 273-A:8, I (a-d). Additionally, per Pub 302.02, the PELRB is also required to consider a common geographic location of the proposed unit as well as the presence of common work rules, personnel practices, salary and fringe benefit structures, and the self-felt community of interest of employees as further evidence of a community of interest.

I find that a sufficient community of interest exists between the Dispatcher/Clerks and the other positions in the proposed bargaining unit. Most importantly, I find that Dispatcher/Clerks are integrated with the other members of the department, particularly through their dispatch duties which require a significant level of interaction with the Patrol Officers. Additionally, the Dispatcher/Clerks are subject to the same departmental-wide procedures and regulations - evidenced by the procedures manual's inclusion of the Dispatcher/Clerk job description. There is a single common geographic location for the police department. Finally, the Dispatcher/Clerks, like the Patrol Officers on patrol in town, serve as a public face or voice of the department. Specifically, they not only deal with all emergency and/or non-emergency calls from the public, but also greet the public from their station located by the front door while wearing a t-shirt that indicates their police dispatcher status.

As to the question of confidentiality, persons whose duties imply a confidential relationship to the public employer are excluded from the definition of public employee provided in RSA 273-A:1, IX, and are therefore barred from bargaining unit membership. See *Appeal of Town of Newport*, 140 N.H. 343, 346 (1995). Within the context of RSA 273-A, "confidential employees" are those "who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *University System of NH v. State of NH*, 117 N.H. 96, 101 (1977) (citations omitted). Factors that should be considered when determining whether an administrative assistant is confidential include whether

the "secretary keeps the personnel records, is privy to any disciplinary actions taken, and attends staff meetings at which confidential matters are discussed." *Appeal of Town of Newport*, 140 N.H. at 347; see also *Appeal of City of Laconia*, 135 N.H. 421, 423-24 (1992) (administrative secretary "confidential" where secretary is "privy to [personnel director's] personal thoughts about the collective bargaining process", present for strategic discussions, and responsible for opening all inter-departmental communications).

In this case, the vast majority of the Dispatcher/Clerk duties are associated with the dispatch portion of the position. Jt. Ex. 1 at 33-34. In fact only one out of fifteen listed duties relates to clerical work:

"13. Provide any police clerical services that may arise in the daily operation of the Police Department." *Id.* at 34.

As a result, the link between the Dispatcher/Clerks' daily assignments and involvement with confidential material arises from the current Chief of Police's personal practice of first hand-writing all of his written material and then forwarding it to the Dispatcher/Clerks for word processing. Importantly, the evidence indicates that the Dispatcher/Clerks are neither exposed, nor integral, to the creative/deliberative process that results in confidential material – they are simply asked to re-type the Chief's previously drafted material. C.f. *Appeal of Town of Newport*, 140 N.H. at 347; *Appeal of City of Laconia*, 135 N.H. at 423-24; see also *City of Portsmouth v AFSCME, Council 93, Local 1386, Portsmouth City Employees*, PELRB Decision No. 2000-058. Additionally, the Chief retains sole departmental control over personnel files. Due to the Dispatcher/Clerks' limited role in personnel matters, it does not appear that the Town would suffer an undue burden without the assistance of the Dispatcher/Clerks' in the administration of its labor relations. These factors all support a conclusion that the Dispatcher/Clerk position is not "confidential" and thus remains eligible for union membership.

A remaining issue is whether the part-time Patrol Officers are eligible for inclusion in the proposed bargaining unit. RSA 273-A:1 (IX) (d) explicitly prohibits "[p]ersons in a probationary or temporary status, or employed seasonally, irregularly or on call" from the definition of a "public employee" eligible for membership in a certified bargaining unit.

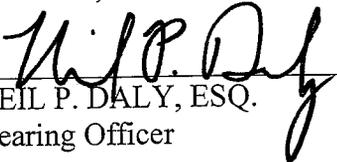
The union seeks the inclusion of part-time Patrol Officers – in particular, those specific officers who are "regularly scheduled" as stipulated by the parties.¹ Where the parties have stipulated to the regularly scheduled status of two part-time Patrol Officers, those regularly scheduled part-time Patrol Officers will be included in the bargaining unit. Those part-time Patrol Officers whose status was not stipulated to are deemed to be irregularly scheduled, and thus, are precluded from bargaining unit membership.

¹ The Union also asserts in its brief that the testimonial evidence established that part-time Patrol Officer George Murray is a "regularly scheduled" employee. I find the evidence insufficient to conclude that Officer Murray is regularly scheduled.

The petition for certification is granted. The bargaining unit shall consist of ten positions: Dispatcher-Clerk (2), Full-time Patrol Officers (4), Regularly Scheduled Part-time Patrol Officers (2), and Sergeant (2). Pursuant to the parties' agreement, the Hearing Officer conducted a review of the signature cards in order to determine if there is a sufficient showing of interest per RSA 273-A:10, I (a). A review of the signature cards demonstrated a sufficient showing of interest. This matter shall proceed to election.

So Ordered.

March 26, 2008



NEIL P. DALY, ESQ.
Hearing Officer

Distribution:
Peter J. Perroni, Esq.
Peter C. Phillips, Esq.