



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**BRENTWOOD POLICE UNION,
NEPBA**

**CASE NO. P-0804
DECISION NO. 2008-247**

and

TOWN OF BRENTWOOD

APPEARANCES

Representing: Brentwood Police Union, NEPBA
Peter J. Perroni, Esq., Nolan Perroni Harrington, LLP,
Lowell, Massachusetts

Representing: Town of Brentwood
Douglas M. Mansfield, Esq., Donahue, Tucker & Ciandella, PLLC,
Exeter, New Hampshire

BACKGROUND

On June 23, 2008 Brentwood Police Union, NEPBA ("NEPBA") filed the above captioned Written Majority Authorization-Petition for Certification. The NEPBA seeks to represent a bargaining unit consisting of the following positions¹:

Police Department Sergeant (1), Detective Sergeant (1), Full and Part Time Patrol Officers (7) and Secretary/Assistant (1) Excluded: Chief of Police.

¹ At the time of hearing the NEPBA withdrew the position of prosecutor.

The Town filed the required list of employees on June 26, 2008 and filed its Answer on July 2, 2008. The Town's objections are: 1) the Secretary/Assistant is a confidential employee and should be excluded from the proposed bargaining unit per RSA 273-A:1, IX (c); 2) the Sergeant position is a supervisory position within the meaning of RSA 273-A:8, II and should be excluded from the proposed bargaining unit; and 3) Joshua Turner and Joseph Gordon are on-call, temporary part-time police officers and cannot be included in the proposed bargaining unit per RSA 273-A:1, IX (d).

On July 7, 2008 the PELRB issued a Notice Re: Written Majority Authorization Petition stating that the petition was supported by a majority of employees in the proposed bargaining unit but a hearing was required on the Town's objections before a final determination on the question of majority support could be determined.

The undersigned hearing officer conducted a hearing on July 18, 2008 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. At the parties' request, the record was held open until August 21, 2008 to allow the parties to file briefs. Both parties have filed briefs, and the record is closed.

FINDINGS OF FACT

1. The Town of Brentwood is a public employer subject to the provisions of RSA 273-A.
2. The NEPBA is an employee organization pursuant to RSA 273-A:10 that is seeking to be certified as the exclusive representative of a bargaining unit through written majority authorization.
3. The Police Department currently employs 4 part-time Patrol Officers but the Town only contests the inclusion of Patrol Officers Joseph Gordon and Joshua Turner.

4. In 2008, the following 3 shifts were reserved for part-time patrol officers and the Chief: Saturday and Sunday, 7:00 a.m. to 3:00 p.m. and Monday 3:00 p.m. to 11:00 p.m.

5. Patrol Officer Gordon is also employed as Sandown's Chief of Police and as a part-time officer in Fremont. He worked 8 hours in Brentwood in 2007 and 25 hours in Brentwood during the first six months of 2008. He worked or was scheduled to work six shifts between July and September, 2008. Beginning in August of 2008 his usual shift is the last Monday night shift of every month.

6. Patrol Officer Turner worked 556 hours in Brentwood in 2007 and 58 hours during the first half of 2008. He was on a leave of absence during the first half of 2008 but has resumed a regular schedule. He worked or was scheduled to work 13 shifts between the end of June and September, 2008. Officer Turner's usual shift is a Saturday or a Sunday every other weekend. He missed one of these shifts due to his vacation scheduling.

7. Sergeant Horace D. Wood has been with the Brentwood Police Department for 5 years, and has been a Sergeant since October of 2005. He gives oral reprimands but has no authority to issue written reprimands, suspensions, demotions, or terminations. He completed employee evaluations in 2007 because the selectmen demanded them on relatively short notice. However, there is no plan for him to complete employee evaluations going forward since it is expected that the Lieutenant and the Chief will be able to complete them as required.

8. Christine Belanger is the Police Department Secretary/Assistant. She fulfills an administrative function in the department, mostly providing support to the Chief and the Lieutenant, but also providing support to Patrol Officers. She has an office outside the Chief's office, and she answers calls and sets up appointments. As Secretary/Assistant she does not have responsibility for or control of confidential personnel files. These files are stored in the Chief's

office, and although the Secretary/Assistant has a key to the Chief's office, he does not expect her to examine or review the personnel files. She has prepared a budget report with the Lieutenant and the Chief, and she does attend meetings with the Lieutenant and the Chief.

9. Julie Stevens is the Administrative Assistant to the Brentwood Selectmen. She acts as a liaison between the Board of Selectmen and various Town departments, and deals with matters such as Accounts Payable, Payroll, Benefits Administration, and the Budget. Christine Belanger has delivered completed employee evaluations to Ms. Stevens, but the evaluations were contained in an envelope and there is no evidence that Ms. Belanger opened or reviewed the evaluations.

DECISION

DECISION SUMMARY

Part-time Patrol Officer Gordon is not a public employee within the meaning of RSA 273-A:1, IX because he is an irregular or on call employee. Accordingly, the Petition must be dismissed since the proposed bargaining unit does not meet the 10 employee minimum required under RSA 273-A:8.

JURISDICTION

The PELRB has jurisdiction of all petitions to determine bargaining units and certify the exclusive representative of an approved bargaining unit through the process of written majority pursuant to RSA 273-A:8, 273-A:10, IX and Pub 301.05.

DISCUSSION

RSA 273-A:1, IX defines a "Public Employee" as "any person employed by a public employer except....(d) Persons in a probationary or temporary status, or employed seasonally, irregularly, or on call. The court has applied dictionary definitions for the terms "irregular" and "on call," stating that "[i]rregular is defined as 'lacking continuity or regularity of occurrence, activity, or function and [o]n call means ready to respond to a summons or command. *In re Town of Stratham*, 144 N.H. 429, 431 (1999). In *Stratham* the part-time officers worked "substantial hours" but had no set day to work and only worked when a shift opened because a full-time officer was unavailable. They were excluded from the bargaining unit under consideration because they were deemed "on-call employees who work on an irregular basis."

The Brentwood Police Department has 3 weekly shifts that are available to 4 part-time officers and to the Chief. However, this does not mean that the 4 part-time officers automatically qualify as public employees under RSA 273-A:1, IX. There must still be some degree of regularity in each of the 4 part-time employee's schedule. In the case of part-time Patrol Officer Gordon this regularity is missing – he worked only 8 hours in 2007 and 25 hours during the first 6 months of 2008. The reasons for part-time Patrol Officer Gordon's limited hours during 2007 and the first half of 2008 were not satisfactorily explained at the hearing. His past work history with the department, his other employment as the Chief of Police in Sandown and as a part-time Officer in Fremont are all more probative of the nature and extent of his likely future employment with the Brentwood Police Department than the evidence that beginning in August, 2008 his regular shift will be the last Monday evening shift of each month. At best, part-time Patrol Officer Gordon occasionally and sporadically works for the Brentwood Police Department. Under RSA 273-A:IX (d) he is more properly characterized as an "irregular" than a "regular" employee of the Brentwood Police Department.

Because part-time Patrol Officer Gordon is not a public employee under RSA 273-A:1, IX (d) the proposed bargaining unit contains less than the requisite 10 employees. The Town has not agreed to a bargaining unit of less than 10 employees, and accordingly there is no need to consider the other disputed positions.

In accordance with the foregoing the Written Majority Authorization Petition is dismissed.

So ordered.

December 5, 2008



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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