



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**HAMPTON FALLS POLICE UNION,
NEPBA**

and

**CASE NO. P-0802
DECISION NO. 2009-017**

TOWN OF HAMPTON FALLS

APPEARANCES

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

Representing: Town of Hampton Falls
Matthew H. Upton, Esq., Upton & Hatfield, Concord, New Hampshire

BACKGROUND

On June 20, 2008 Hampton Falls Police Union, NEPBA ("NEPBA") filed the above captioned Written Majority Authorization Petition for Certification seeking to represent a bargaining unit consisting of the following positions:

Police Department Lieutenant (1), Corporal¹ (1), Patrol Officers and Part-Time Patrol Officers (10) and Administrative Assistants (1). Excluded: Chief of Police.

¹ At the outset of the hearing the NEPBA's motion to amend to add the position of Corporal to the proposed bargaining unit was granted without objection, although the Town noted that one of the full time Patrol Officer positions might be eliminated in the event the Corporal position was filled given current funding for the department.

The PELRB issued a Notice of Filing on June 23, 2008 and the Town filed the required list of employees on June 25, 2008 and filed its Answer on July 3, 2008. The Town's objections are: 1) lack of 10 employees with the same community of interest; 2) some of the part-time patrol officers are irregular or on call employees per RSA 273-A:1, IX (d) and should be excluded from the proposed bargaining unit; 3) the Lieutenant is a supervisor within the meaning of RSA 273-A:8, II and should be excluded from the proposed bargaining unit; and 4) the Administrative Assistant is a confidential employee and should be excluded from the proposed bargaining unit per RSA 273-A:1, IX (c).

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 August 28, 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 September 26, 2008 to allow the parties to file briefs. Subsequently the parties were ordered to file payroll records concerning 3 of the disputed employees, *see* PELRB Decision 2008-264. The Town submitted the required payroll information on January 15, 2009 and the document is included in the record as Town Exhibit 5. Both parties have filed briefs, and the record is closed.

FINDINGS OF FACT

1. The Town of Hampton Falls is a public employer subject to the provisions of RSA 273-A.
2. The NEPBA is an employee organization that seeks to be certified as the certified exclusive representative of a bargaining unit through written majority authorization pursuant to RSA 273-A:10.
3. Thomas Boynton has served as a Lieutenant in the department for approximately 7 years. The record does not reflect any historical involvement of this position in the hiring and firing process or the evaluation of department employees. The department does not have a formal evaluation process, although Chief of Police Robbie Dirsa has been working toward the implementation of a formal evaluation process for several years, and given the small size of the department he expects and hopes to do the evaluations on his own, as he is sufficiently familiar with all of the department's employees.
4. Chief Dirsa is responsible for virtually all department discipline, with the exception of the authority granted to Lieutenant Boynton in the Chief's absence. This authority is contained in paragraph 14 of the Lieutenant's job description (Town Exhibit 4), which provides:
 14. OFFICER IN CHARGE: In the absence of the Chief of Police, department general supervision is assumed by the Lieutenant as Officer in Charge. It could also involve the making of temporary decisions relative to subordinate employee behavior while on duty if required.
5. It is Lieutenant Boynton's understanding that even with the language in paragraph 14 of his job description, Chief Dirsa is responsible for all discipline. Chief Dirsa testified that he still expects the Lieutenant to call him to obtain direction on how to deal with a particular employee situation that might arise in his absence. Such action might consist of placing an officer who is

unfit for duty on administrative leave pending the completion of an investigation. This was also referred to as “sending an officer home.”

6. Sharada Allen, also known as “Sherry”, has served as the department’s part time secretary for 17 years. She supports the Lieutenant in his prosecutorial duties and has access to department personnel files. She has typed letters of reprimand, although the Chief has typed such letters as well. The Chief expects that Sherry might help prepare and document presentations for use in negotiations in the event of collective bargaining. The record also established that Hampton Falls has a full time town manager and full and part time administrative assistants.

7. The four disputed part-time Patrol Officer positions are held by Bruce Preston, John Mounsey, Jason Allen, and John McEachern. Officer Preston also works full time at the Navy Yard, and Officers Allen and Mounsey are full time at the Seabrook Police Department.

8. Chief Dirsa expects and requires that Officers Preston, Mounsey and Allen each work at least 2 shifts per month, although when contacted about working a particular shift it is possible that one of these part-time officers could decline to work. This response to scheduling is discouraged, but it has happened. Currently 2 shifts per week, usually a Saturday and a Sunday, are reserved for these officers. The Chief’s expectation that Officers Preston, Mounsey, and Allen will work at least 2 shifts a month is motivated in part by the Chief’s desire to maintain the officers’ familiarity with department procedures and operations and the failure to work 2 shifts without a good excuse could lead to termination. However, despite the Chief’s expectation, these officers are not necessarily scheduled to work or in fact work 2 shifts per month.

9. According to Union Exhibit 2, represented to be the posted schedule for January to September, 2008, the 4 disputed part-time positions were scheduled to work shifts as follows:

Month	Mounsey	Allen	Preston	McEachern
January	0	3	2	0
February	0	1	2	0
March	2	1	2	0
April	2	1	1	0
May	2	2	2	0
June	0	2	2	0
July	0	2	1	0
August	0	2	1	0
September	0	1	1	0
Total	6	15	14	0

10. Actual shifts and hours worked by Officer Mounsey during the first 6 months of 2008, per Town Exhibit 5, are as follows:

Month	Hours	Number Shifts	Date	Day
January	28.5	4	January 4 January 11 January 18 January 25	Friday Friday Friday Friday
February	11.5	2	February 1 February 1	Friday Friday
March	16	2	March 9 March 23	Sunday Sunday
April	16	2	April 6 April 27	Sunday Sunday
May	21.5	4	May 4 May 6 May 10 May 18	Sunday Sunday Saturday Sunday
June	8	1	June 9	Monday
Total	101.5	15	NA	NA

11. Actual shifts and hours worked by Officer Allen during the first 6 months of 2008, per Town Exhibit 5, are as follows:

Month	Hours	Number Shifts	Date	Day
January	16	2	January 13 January 27	Sunday Sunday
February	7.5	2	February 24	Sunday
March	8	1	March 2	Sunday
April	8	1	April 20	Sunday
May	17	2	May 11 May 25	Sunday Sunday
June	8	1	June 15	Sunday
Total	64.5	8	NA	NA

12. Actual shifts and hours worked by Officer Preston during the first 6 months of 2008, per Town Exhibit 5, are as follows:

Month	Hours	Number Shifts	Date	Day
January	16	2	January 5 January 19	Saturday Saturday
February	12	2	February 2 February 22	Saturday Friday
March	24	5	March 12 March 15 March 16 March 28 March 29	Wednesday Saturday Sunday Friday Saturday
April	0	0		
May	18.5	4	May 6 May 10 May 11 May 24	Tuesday Saturday Sunday Saturday
June	18	2	June 15 June 22	Sunday Sunday
Total	88.5	15	NA	NA

13. Patrol Officer McEachern has been a department employee since the 1970's. He does not work patrol shifts. His current duties include animal control operations, special details, and the performance of odd tasks, such as transporting material to labs or shuttling police cruisers as

needed. Officer McEachern is the designated officer for the performance of such special duties and details. He worked approximately 35 hours during the first 6 months of 2008.

DECISION

DECISION SUMMARY

The Lieutenant position does not qualify as a supervisory position within the meaning of RSA 273-A:8, II and the Town's request to exclude this position is denied. However, Officers Allen, McEachern, and Mounsey are excluded as these individuals qualify as on call or irregular employees per RSA 273-A:1, IX (d). As a result, the proposed bargaining unit contains less than the requisite 10 employees and the petition is dismissed.

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: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." 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. 610 (1993)). The relevant analysis includes consideration of the degree of significance of the exercise of discretion as well as the propensity to create conflict within the bargaining unit because of differing duties and relationships. See *Londonderry Executive Employee Association v. Town of Londonderry*, PELRB Decision No. 2001-118. See also *Tilton Police Union, NEPBA*

Local 29 v. Town of Tilton, PELRB Decision No. 2007-100 (police sergeant included in bargaining unit); and *AFSCME Council 93, Belmont Town Employees and Town of Belmont*, PELRB Decision No. 2008-165 (police sergeant excluded from bargaining unit).

There was little or no evidence submitted into the record concerning hiring and firing. The evidence concerning evaluations established that the department does not conduct formal evaluations, and in the event the formal evaluation process is implemented in the future it is more likely than not that the Chief, and not the Lieutenant, will conduct and complete the evaluations. The Town relies on paragraph 14 of the Lieutenant's job description to establish his involvement in the disciplinary process. However, the somewhat tepid language of this paragraph "could also involve the making of *temporary* decisions relative to subordinate employee behavior" when considered in conjunction with the evidence concerning evaluations and the lack of evidence concerning hiring and firing lead to the conclusion that the Lieutenant position in the Hampton Falls police department is not vested with "supervisory authority involving the significant exercise of discretion." See RSA 273-A:8, II.

As to the disputed part-time patrol officer positions, 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

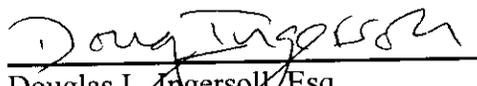
work on an irregular basis.” Officer Allen, a full-time officer with the Seabrook Police Department, worked 8 shifts for a total of 64 hours during the first six months of 2008. He only worked one shift per month during 4 of the first 6 months of 2008, less than Chief Dirsa’s relatively modest goal of 2 shifts per month. His work history during this time period demonstrates a lack of “continuity or regularity of occurrence, activity, or function” to a degree that requires his designation as an irregular employee under RSA 273-A:1, IX (d).

Officer Mounsey worked 15 shifts during the first half of 2008, but he was only scheduled to work 6 shifts during this time period, and he was not scheduled to work any shifts during July to September, 2008. *See* Union Exhibit 2 and Town Exhibit 5. Based upon this evidence, Officer Mounsey qualifies as an on-call and irregular employee. The same is true with respect to Officer McEachern, who is not scheduled as a patrol officer and otherwise worked fewer hours than did Officer Allen. Officer McEachern is commonly used to meet department needs for tasks such as canine control, cruiser transport, and the transport of material to labs. He effectively serves the department’s needs in these areas in an on-call capacity. His work pattern also demonstrates a lack of the requisite regularity or continuity, and like Officer Allen he must be deemed an irregular employee.

As a result, the proposed bargaining unit contains less than the requisite 10 employees required under RSA 273-A:8, I because of the exclusion of these 3 employees. Accordingly, the petition is dismissed.

So ordered.

January 22, 2009



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:
Peter Perroni, Esq.
Matthew Upton, Esq.