



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**ROCHESTER MUNICIPAL EMPLOYEES
ASSOCIATION**

and

CASE NO. G-0075-1
DECISION NO. 2009-150

CITY OF ROCHESTER

APPEARANCES

Representing: Rochester Municipal Employees Association
John S. Krupski, Esq., Molan Milner & Krupski, PLLC
Concord, New Hampshire

Representing: City of Rochester
Thomas J. Flygare, Esq., Flygare, Schwarz & Closson, PLLC
Exeter, New Hampshire

BACKGROUND

On December 19, 2008 the Rochester Municipal Employees Association (Union) filed the above captioned Written Majority Authorization (WMA) Petition for Certification seeking to represent a bargaining unit consisting of the following positions:

Account Clerk II (3), Administration/Network Specialist (1), Animal Control Officer (1), Arena Attendant (1), Clerk Typist I (4), Clerk Typist II (3), Community Development Coordinator (1), Construction Engineer (2), Crime Analyst (1), Electrical Inspector (1), Executive Secretary (1), Field Assessor (2), Health Inspector (1), IS Technician (3), Juvenile Court Coordinator (1), Parking Enforcement Officer (1), Recreation Program Coordinator (1), Secretary I (8), Secretary II (10), Senior Accountant (1), Social Worker (1), Utility Billing Administrator (1), Utility Billing Clerk (1).

The City of Rochester (City) filed a list of employees and an Objection to Composition of Proposed Bargaining Unit on January 7, 2009. In its Objection, the City claims that the position of an Executive Secretary in the City Manager's office should be excluded from the bargaining unit because it is a confidential position and that the position of a Secretary II in the City Finance Office should be excluded because it is a confidential position.

On January 8, 2009 the hearing officer inspected and examined the confidential authorization cards at the PELRB offices in Concord in accordance with the procedures and requirements set forth in the Administrative Rule Pub 302.05 and issued a Confidential Inspection of Written Majority Authorization Cards Report stating that the petition was supported by a majority of employees in the proposed bargaining unit but a hearing was required on the objections to the petition before a final determination of the sufficiency of the written majority authorization cards could be made.

A hearing was initially scheduled for February 4, 2009. The City filed motions to continue the hearing on January 15, 2009 and on February 27, 2009. The Union assented to both motions. Both motions were granted. On March 27, 2009 the Union filed a motion to continue, to which the City assented. The Union's motion was granted and the hearing was rescheduled to May 18, 2009.

The undersigned hearing officer conducted a hearing on May 18, 2009 at the PELRB offices in Concord at which time 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 June 12, 2009 to allow the filing of post-hearing briefs. Both parties filed their briefs on June 12, 2009 and the record was closed.

FINDINGS OF FACT

1. The City of Rochester is a public employer as that term is defined in RSA 273-A:1, IX and, therefore, subject to the provisions of RSA 273-A.
2. The Rochester Municipal Employees Association is an employee organization seeking to be certified as the exclusive representative of a bargaining unit through written majority authorization pursuant to the provisions of RSA 273-A:10.
3. The proposed bargaining unit contains 50 City employees in 23 positions.
4. There are several other bargaining units in the City and the City is a party to several collective bargaining agreements.
5. John Scruton is the City Manager and a collective bargaining negotiator for the City of Rochester.
6. Patricia Kairo is a full time Executive Secretary to the City Manager and to the Rochester City Council. Ms. Kairo has worked at the City Manager's Office since 1990. Her duties include processing the City Manager's mail, screening phone calls and faxes, taking messages for the City Manager and the City Council, scheduling meetings and commitments for the City Manager, and assisting the City officials with information. Her duties are outlined in City Exhibit 1.
7. Ms. Kairo prints out and delivers all email correspondence addressed to two members of the City Council, including correspondence regarding labor relations matters. She has edited a grievance decision drafted by Mr. Scruton at least once. She sees the grievance decisions when she sends them out and files them. As part of her duties, Ms. Kairo accepts the grievances, stamps them, and gives them to the City Manager. She keeps grievances in her desk. She opens Mr. Scruton's mail including confidential letters from attorneys who represent the

City of Rochester in labor disputes and negotiations. She prepares all documents that go to the legal counsel, including confidential documents related to collective bargaining. She prepares settlement documents for the City Council, including the settlement proposals that do not get accepted and, therefore, remain confidential.

8. Ms. Kairo receives complaints from the public regarding the City employees. After reviewing a complaint, she contacts an appropriate department head, obtains information about the matter on her own, and then talks to the City Manager. Sometimes, she resolves the matter herself and gets back to the person who complained.

9. The members of the City Council frequently congregate in Ms. Kairo's office and discuss various matters, including confidential matters related to collective bargaining. Ms. Kairo has access to the City Manager's office during confidential meetings and to the personnel documents through the Human Resources Department.

10. Brian LeBrun is a Finance Director/Deputy City Manager and a ranking negotiator for all of the City's negotiating teams. He dedicates over 50% of his time to labor relations matters.

11. Shirley McCrillis is a full time Secretary II in the City Finance Office. The duties of Secretary II are outlined in City Exhibit 2.

12. At the time the petition was filed, there were 10 full time employees in a Secretary II position.

13. In addition to the duties outlined in City Exhibit 2, Ms. McCrillis acts as an administrative secretary to Mr. LeBrun. She edits and types documents for Mr. LeBrun, including letters involving grievances, and gathers and prepares information for cost analysis, including confidential health insurance information.

14. Ms. McCrillis has access to negotiations documents, confidential collective bargaining information, grievance decisions, invoices from attorneys representing the City in labor relations matters, and the cost information on settlements. She collects strategically selected labor contracts from the certain comparable communities which are used by the City in collective bargaining.

DECISION

DECISION SUMMARY

The position of an Executive Secretary is excluded from the bargaining unit as a confidential position. The position of a Secretary II in the City Finance Office is excluded from the bargaining unit as a confidential position. The petition is granted as to the approved bargaining unit as there is a sufficient written majority authorization by the employees in the unit.

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 authorization pursuant to RSA 273-A:8, 273-A:10, IX and Pub 301.05.

DISCUSSION

The City seeks to exclude the positions of Executive Secretary and Secretary II in the City Finance Office from the proposed bargaining unit claiming that these positions are confidential. RSA 273-A:1, IX (c) excludes confidential employees from the definition of a "public employee." Confidential employees are "[p]ersons whose duties imply a confidential relationship to the public employer." RSA 273-A:1, IX (c). "There is no set minimum or

maximum number of employees who may be deemed confidential.” *Appeal of City of Laconia*, 135 N.H. 421, 424, 605 A.2d 225 (1992).

The PELRB has previously defined “confidential employees” as those employees who have “access to confidential information *with respect to labor relations*, negotiations, significant personnel decisions and the like.” *State of New Hampshire, Dept. of Rev. Administration v. State Employees’ Ass’n*, Decision No. 78001 at 5 (PELRB Jan. 1978) (emphasis in original), quoted in *Laconia*, 135 N.H. at 422. See also *Northfield Police Union, New England Police Benevolent Association and Town of Northfield*, Decision No. 2009-30 (PELRB Feb. 2009); *Teamsters Local 633 of NH/Newmarket Public Works Employees and Town of Newmarket*, Decision No. 2008-127 (PELRB Jun. 2008).

In the present case, the evidence demonstrates that the Executive Secretary has access to confidential information with respect to labor relations, including grievances and negotiations, and with respect to personnel decisions. The Executive Secretary’s responsibility for processing the City Manager’s mail, screening phone calls and faxes, taking messages for the City Manager and the City Council, scheduling meetings and commitments for the City Manager, processing grievances, receiving complaints against the City employees and responding to them, and preparing settlement documents for the City Council and documents that go to the legal counsel demonstrates involvement in labor relation and personnel matters to a degree that implies a “confidential relationship to the public employer.” In addition, Ms. Kairo testified that she maintains confidences relevant to the subject matter at hand. The City Manager, who negotiates for the City and manages most of the employees in the proposed bargaining unit, testified that it is necessary to keep the Executive Secretary fully informed to enable her to perform her duties. He also testified that the inclusion of the Executive Secretary in the bargaining unit would create

substantial difficulties in his ability to perform his labor relations duties. Accordingly, the position of an Executive Secretary is excluded from the proposed bargaining unit on that basis.

The Secretary II in the City Finance Office, despite her job title, acts as an administrative assistant to Mr. LeBrun, who directly participates in labor relations matters. The evidence also sufficiently demonstrates that the Secretary II in the City Finance Office has access to confidential information with respect to labor relations and personnel decisions. Her responsibilities for editing and typing documents for Mr. LeBrun, including letters involving grievances, and gathering information for cost analysis, including confidential health insurance information, demonstrates that she has access to confidential information with respect to labor relations, negotiations, and personnel matters to a degree that implies a “confidential relationship to the public employer.” This conclusion is further supported by Mr. LeBrun’s credible testimony that if the position of Secretary II in the City Finance Office would be added to the bargaining unit, he would be forced to keep secrets and would have to deal with many things on his own, which would have a negative impact on his ability to perform his duties.

Accordingly, the position of the Secretary II in the City Finance Office is also excluded from the bargaining unit. Other Secretary II positions are included in the bargaining unit. The City may wish to consider changing the title and/or classification for the position of the Secretary II in the City Finance Office in order to prevent confusion in the future.

After the deletion of two above mentioned positions, the Union’s petition is supported by a sufficient number of authorization cards to establish that a majority of the employees in the approved bargaining unit have selected the Union to serve as their exclusive bargaining representative under RSA 273-A.

The Union's WMA petition for certification is granted. The bargaining unit includes the following positions:

Account Clerk II, Administration/Network Specialist, Animal Control Officer, Arena Attendant, Clerk Typist I, Clerk Typist II, Community Development Coordinator, Construction Engineer, Crime Analyst, Electrical Inspector, Field Assessor, Health Inspector, IS Technician, Juvenile Court Coordinator, Parking Enforcement Officer, Recreation Program Coordinator, Secretary I, Secretary II, Senior Accountant, Social Worker, Utility Billing Administrator, Utility Billing Clerk.

The following positions are specifically excluded: Executive Secretary in the City Manager's Office and Secretary II in the City Finance Office.

So ordered.

July 20, 2009


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:
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