



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Strafford County Sheriff's Employee Association,
NEPBA Local 295**

and

Strafford County Sheriff's Office

**Case No. G-0196-1
Decision No. 2012-254**

Appearances:

Kévin E. Buck, Esq., Nolan Perroni Harrington, LLP, Lowell, Massachusetts for the
Petitioner

Gary W. Wulf, Labor Relations Consultant, Strafford County, New Hampshire for
the Respondent

Background:

The Strafford County Sheriff's Employee Association, NEPBA Local 295 (Association) filed a petition for certification on July 13, 2012 seeking to represent certain employees of the Strafford County Sheriff's Office (County). The County objects to the inclusion of Sergeants, Deputies assigned to Immigration and Customs Enforcement (ICE), probationary employees, a Dispatch Supervisor, and an Assistant Dispatch Supervisor in the proposed bargaining unit. The County argues, among other things, that the Sergeants, the Dispatch Supervisor, and the Assistant Dispatch Supervisor are supervisory employees and should be excluded from the unit pursuant to RSA 273-A:8, II and that the Deputies assigned to ICE are irregular or on call employees who lack a community of interest with other employees in the proposed unit and should be excluded pursuant to RSA 273-A:1, IX, (d) and RSA 273-A:8, I.

The undersigned hearing officer conducted a hearing on August 24, 2012 at the Public Employee Labor Relations Board (PELRB) offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses.

Findings of Fact

1. The County is a public employer within the meaning of RSA 273-A:1, IX. Wayne Estes is the High Sheriff of the County.

2. The Association is an employee organization seeking to be certified as the exclusive representative of a bargaining unit consisting of certain employees of the County Sheriff's Office through a representation election pursuant to the provisions of RSA 273-A:10.

3. The proposed bargaining unit contains the following positions: Sergeant (full time and part time), Deputy (full time and part time), Dispatch Supervisor, Assistant Dispatch Supervisor, Dispatcher (full time and part time), and Secretary. The Association did not include Bailiffs in the proposed bargaining unit.

4. The County does not object to the inclusion of Secretary, full time and part time Dispatchers, full time Deputies, part time Deputies employed as Court Security Officers, and other part time Deputies, except part time Deputies assigned to the ICE, in the bargaining unit.

5. At the time of the hearing, the proposed unit contained fifty four employees, including two Sergeants, five ICE-assigned Deputies, one Dispatch Supervisor, one Assistant Dispatch Supervisor, and eight probationary employees but excluding Bailiffs. See County Exhibits 1 & 9.

6. All employees in the proposed bargaining unit function within the same organizational unit and report to work to the same building, the Sheriff's Office, unless on assignment.

7. Some Sheriff's Office employees work 7:00 a.m. to 5:00 p.m., some - 8:00 a.m. to 6:00 p.m., some - 12:00 p.m. to 8:00 p.m., and some are on call 24/7. With the exception of the Dispatch Center, the Sheriff's Office is not manned 24 hours a day.

8. The County Personnel Policies, set forth in a handbook, apply to all employees in the proposed bargaining unit, including the part time Deputies assigned to the ICE. This handbook covers such terms and conditions of employment as job applications, term of employment, probationary period, employee classifications, overtime, pay policy/deductions, changes in personnel records, rest and lunch periods, employee evaluations, promotions, transfers, layoffs, pre-employment physical examinations, grievances, disciplinary procedures and codes, and employee benefits, including but not limited to health, dental, life, and disability insurance, longevity pay, paid holidays, and vacation, sick, and other leave.

9. Part-time employees receive benefits on a pro-rated basis.

10. One of the primary functions of the Sheriff's Office is prisoner transport. The Sheriff's Office employees are also responsible for court security.

11. The County has a contract with the ICE office to house prisoners in Strafford County jail. Pursuant to this contract, the County Sheriff's Office transports ICE prisoners.

12. Court Security Officers are part time Deputies. The Job Description for the position of Court Security Officer provides as follows:

A Court Security Officer is a sworn officer (Deputy Sheriff) and is responsible for maintaining law and order in all assigned court rooms, under the mandate of the Sheriff, and in accordance with guidelines set forth by statute in and for the State of New Hampshire.

...
PRIMARY FUNCTIONS

1. Conduct daily inspections of all security equipment, such as duress alarms, fire alarms, radios, telephones, intercoms, fire extinguishers, first aid kits, hand-held scanning devices, etc.
2. Conduct daily inspections of the courthouse for detection of contraband and complete room security checks for suspicious packages, devices, etc.

3. Inspect and search persons and personal effects of public entering courthouse. Must be familiar with the operation and procedures of the magnetometer. May utilize the hand held magnetometer wand.
4. Provides security in corridors, chambers and/or other courthouse spaces.
5. Safeguards evidence when directed by the judge.
6. Complies and adheres to all firearms rules, regulations and policies of the Sheriff's Office.
7. Review daily schedules of the court and the judge to determine if special security is warranted.
8. Provide supervision to jurors, the public, the press and prisoners.

...

KNOWLEDGE; SKILLS AND ABILITIES

1. Knowledge of law enforcement operations, policies, accepted police procedures, and New Hampshire ordinances and laws. Ability to learn/understand new regulations and enforce them.

- ...
3. Skilled in the use of firearms, restraining devices, OC spray, etc. Court Security Officer is subject to firearms range qualifications annually.

- ...
5. Knowledge of defensive tactics and equipment if needed.
 6. Skilled in the use of communication devices, such as radios, telephones alarms, etc.

PHYSICAL REQUIREMENTS

1. Possess and maintain the physical capabilities and stamina to engage in confrontational physical arrest under various situations.
2. Possess the physical ability to run and subdue a fleeing person by apprehending and restraining the person by means consistent with standard law enforcement techniques.
3. Possess good vision for the use of firearms.

QUALIFICATIONS

Education: High school diploma or equivalent. Law enforcement background preferred.
 License Certification: Possess a New Hampshire Police Standards & Training Council part time police officer certification.

See Union Exhibit A5.

13. The Job Description for the position of full time Deputy provides as follows:

DESCRIPTION OF DUTIES AND RESPONSIBILITIES

Under the general direction of the Sheriff and the direct supervision of the Captain, within established policies and procedures, the Deputy Sheriff performs the following functions.

PRIMARY FUNCTIONS

...

3. Serve all lawful civil process assigned in the most discrete, proficient and expeditious manner possible.
4. Transport all court ordered persons from District, Probate and Superior Courts to directed places of confinement or treatment while maintaining the utmost security pursuant to SCSO policies and procedures.
5. Transport any incarcerated person in New Hampshire to destinations the District, Probate and Superior Courts may lawfully order while maintaining the utmost security pursuant to SCSO policies and procedures.
6. Transport Strafford County House of Correction inmates to medical facilities as lawfully requested by the Superintendent while maintaining the utmost security pursuant to SCSO policies and procedures.
7. Transport all Involuntary Emergency Admission (IEA) pursuant to New Hampshire RSA 135-C:63, Duty to Transport, while maintaining the utmost care and security pursuant to SCSO policies and procedures.
8. Travel to an asylum States to effect the Extradition/Rendition of a wanted person in Strafford County, by maintaining the utmost care and security pursuant to SCSO policies and procedures and complying with the Uniform Criminal Extradition Act/Fugitive from Justice procedures.
9. Responsible in [sic] upholding the laws of the State of New Hampshire, assist other law enforcement agencies in need or upon request.
10. Conduct investigations under the direction of the Sheriff, Captain or Sergeant.
11. Make arrests in civil and criminal matters pursuant to New Hampshire laws.
12. Prepare forms, letters, statements and written reports as required.
13. Deputy Sheriff must comply with all the New Hampshire Police Standards and Training Council requirements as a full - time police officer.
14. Deputy Sheriff is subject to being called to duty on a 24 - hour basis. Additionally, he/she is required to be on call utilizing a weekly rotating schedule.
15. Perform civil standby to maintain peace and order, as authorized by a proper authority.
16. Assumes temporary command of an incident or event until the Captain or Sheriff arrives.

See County Exhibit 3.

14. A part time Deputy's duties and responsibilities are essentially identical to those of a full time Deputy. Part time Deputies, including those assigned to the ICE must comply with the New Hampshire Police Standards and Training Council requirements for a part time police officer. See County Exhibit 4.

15. Currently, there are five part time Deputies assigned to the ICE. These Deputies are employees who have retired from other employment, primarily in law enforcement, and who work not more than 32 hours per week. Currently, they are on 3-day rotation on the following continuous schedule: week one – Monday, Tuesday, and Wednesday on ICE assignments; week

two – Thursday, Friday and on call on ICE assignments; week three – off and available to work on call for the Sheriff's Office, if there are any hours left of the 32-hour work limit.

16. There is no requirement that Deputies assigned to the ICE be retired employees.

17. Deputies assigned to the ICE are required to possess the same training certification as other part time Deputies in the Sheriff's Office, i.e., New Hampshire Police Standards & Training Council's part time police officer certification. "Part-time certified" employees are only allowed to work a certain number of hours per year.

18. According to the appointment letters of Deputies assigned to the ICE, each of them is assigned to work 16 hours and is eligible for benefit accrual, including annual, holiday, and sick leave on pro-rated basis. They are also paid overtime. See County Exhibits 5 & 6.

19. The holding facility, arrest processing, and local branch office for the ICE are in a Federal Building in Manchester, New Hampshire. When working for the ICE, Deputies receive their assignments from ICE employee Mr. Stevens or some other immigration officer in the Manchester ICE office.

20. The primary responsibility of part-time Deputies assigned to the ICE is the transport of inmates/illegal immigrants to and from various locations around New England, including Maine, Vermont, and Canadian border. When working for the Sheriff's Office during week three of their schedule, the Deputies' duties include guarding and transport of prisoners.

21. ICE-assigned Deputies are paid by the Sheriff's Office. The Office then bills the ICE for reimbursement.

22. Bruce Bonenfant worked as a Deputy for 4 years. He is a retired Lieutenant who used to work for the Fish and Game Administration. He has been assigned to the ICE for almost a year.

23. A Sheriff's Office cruiser is utilized to transport prisoners for the ICE. Deputy Bonenfant takes the Sheriff's Office cruiser home on week three of his schedule.

24. On work days, ICE-assigned Deputies report to the Sheriff's Office before they go to the ICE office in Manchester unless it is necessary for them to go directly to a location in another state. On weeks one and/or two of their schedule, if no ICE-related work has yet been assigned, the ICE-assigned Deputies report to the Sheriff's Office and pick up a car. Then, they go to the ICE Office in Manchester and wait for work to be assigned.

25. The Sheriff's Office Transport Sergeant, Robert Williams, is the first line supervisor for the ICE-assigned Deputies. The ICE office employees do not have authority to discipline the Sheriff's Office Deputies assigned to the ICE.

26. The ICE-assigned Deputies do not usually know exact number of hours they will work on a given day. For example, if they work 32 hours within a two-day period, they do not work for the rest of the week. They worked on average between 16 and 32 hours per week between June 23, 2012 and August 11, 2012. See County Exhibit 5 (graph).

27. The ICE-assigned Deputies are paid at the same hourly rate as other part time Deputies. This rate of pay is set by the County.

28. When necessary, an ICE-assigned Deputy can request additional personnel from the Sheriff's Office to work for the ICE. Sgt. Williams makes that assignment.

29. According to Sheriff Estes, the Sheriff's Office has six supervisory positions: Captain (whose employment is scheduled to end shortly after the adjudicatory hearing); Administrative Assistant; two Sergeants; Dispatch Supervisor; and Assistant Dispatch Supervisor. According to Sheriff Estes, the Sheriff's Office will have two Sergeants, one acting Sergeant, and no Captain. The Sheriff's Office has 72 employees in total.

30. The Sheriff's Office utilizes a progressive disciplinary procedure that includes verbal warning, written warning, suspension, and termination. Any supervisor, including Sergeants, the Dispatch Supervisor, and the Assistant Dispatch Supervisor, can issue a verbal warning and provide counseling. Verbal warnings are not placed in personnel files. Only the

Sheriff can issue written warnings. A Captain has authority to suspend an employee with pay. Only the Sheriff has authority to suspend an employee without pay or to terminate an employee. An employee can appeal suspension and termination to the County Commissioners.

31. The Sheriff's Office currently has two Sergeants: Robert Williams, who is in charge of the Transport division (Transport), including full time and part time Deputies, and Joseph McGivern, who is in charge of the Civil division (Civil), including Court Security Officers, and oversees the Dispatch Center. Transport Sergeant is the senior Sergeant. The Sergeants work "[u]nder the general direction of the Sheriff and the direct supervision of the Captain". See County Exhibit 1 & 2.

32. The Job Description for the position of Sergeant provides as follows:

PRIMARY FUNCTIONS

A. Sergeant - Civil

1. Supervises the daily work assignments of Civil Deputies, Court Security Deputies, Bailiffs, prisoner transports, K-9 Unit, and the US Marshal's Office, including but not limited to; all assignments issued by the Sheriff or Captain.
2. Review reports submitted by Deputies such as; weekly activity sheets, civil process documents and other reports authorized by the Captain and or Sheriff.
- ...
4. Responsible for upholding the laws of the State of New Hampshire and for assisting other law enforcement agencies in need or upon request.
5. Conduct investigations under the direction of the Sheriff or Captain.
6. Make arrests in civil and criminal matters pursuant to New Hampshire laws.
7. Prepare forms, letters, statements and written reports as required.
8. Comply with all the New Hampshire Police Standards and Training Council requirements.
9. Subject to being called to duty on a 24-hour basis.
10. Assumes command of an incident or event until the Captain or Sheriff arrives.
11. Performs current assigned duties as described in the job description for Deputy Sheriff.
12. Oversee the Dispatch Center and participate in CALEA Accreditation process.

B. Sergeant - Transport

1. Supervises the daily work assignments of Civil Deputies, Court Security Deputies, Bailiffs, prisoner transports, K-9 Unit, and the US Marshal's Office, including but not limited to; all assignments issued by the Sheriff or Captain.
2. Review reports submitted by Deputies such as; weekly activity sheets, civil process documents and other reports authorized by the Captain and or Sheriff.
- ...

4. Responsible for upholding the laws of the State of New Hampshire and for assisting other law enforcement agencies in need or upon request.
5. Conduct investigations under the direction of the Sheriff or Captain.
6. Make arrests in civil and criminal matters pursuant to New Hampshire laws.
7. Prepare forms, letters, statements and written reports as required.
8. Comply with all the New Hampshire Police Standards and Training Council requirements.
9. Subject to being called to duty on a 24-hour basis.
10. Assumes command of an incident or event until the Captain or Sheriff arrives.
11. Performs current assigned duties as described in the job description for Deputy Sheriff.

License/Certification: Possess a New Hampshire Police Standards & Training Council full-time police officer certification. ...

See County Exhibit 2.

33. Sergeants have authority to issue verbal warnings.

34. Sgt. Williams has been employed by the County Sheriff's Office for 14 years. He has been a Sergeant in the Transport Division for the last 10 years, prior to which he served as a Deputy Sheriff in the Civil Division. He works from 7:00 a.m. to 5:00 p.m., Monday through Friday and has one day off during the week on a rotating basis.

35. The Transport Sergeant schedules prisoner transports requested by the Marshall's Office, transports prisoners, oversees and adjusts employees' work schedules, approves Deputies' leave requests, and regularly meets with a Civil Division Sergeant to discuss daily matters, such as assignment of Deputies and transports. Occasionally, he does civil process and oversees extraditions. He reports to the Captain and the Sheriff.

36. Written evaluations are prepared by an immediate supervisor who then discusses them with evaluated employees. Then, the evaluations go up the chain of command, if there are no problems. After the Sheriff signs them, they are placed in personnel files. Sheriff Estes rarely overrules evaluations submitted by his subordinates. Evaluations are taken into consideration in promotions. They are not used to award a pay raise as the pay rates must be approved by the County delegation.

37. Sgt. Williams performs annual evaluations for part time and full time Deputies in the Transport Division.

38. Sgt. Williams has conducted some internal affairs investigations. He has authority to discipline Deputies in an emergency situation. Otherwise, he always first consults his superiors regarding discipline even if they are on vacation. He makes recommendations on discipline to the Sheriff. He also recommends commendations to the Captain or the Sheriff.

39. Sgt. Williams has never relieved an employee from duty:

40. Because he has been a Sergeant for less than a year, Sgt. McGivern has not yet conducted annual performance evaluations. He will be conducting evaluations of Deputies in the Civil Division.

41. In the absence of the Captain and the Sheriff, Sgt. Williams, and in his absence, Sgt. McGivern, is in charge of the Sheriff's Office. If neither the Captain nor Sgt. Williams is present, Sgt. McGivern is in charge of the Transport Division.

42. Sgt. McGivern has authority to discipline an employee in case of emergency but he always contacts the Captain or the Sheriff first. He has authority to send an employee home with pay in an emergency situation. Sgt. Joseph McGivern considers himself a supervisor.

43. The hiring process begins with placing an advertisement. Then, a Captain or a Sergeant reviews the applications. The Sheriff conducts the final interview and makes the hiring decisions.

44. The Sheriff's Office provides 24/7 dispatch services. The Dispatch Center has set shift: Sunday through Saturday, 4 days on, 3 days off, two 12-hour days and two 8-hour days.

45. The Job Description for the position of part time Public Safety Dispatcher provides in part as follows:

The Strafford County Sheriffs Dispatch Center has primary responsibility for the proper deployment of public safety personnel and the necessary support equipment pursuant to the dispatch center policies and procedures. It is the processing point for the Sheriff and

his deputies' radio and telephone communications. The dispatch center provides police communications services to the towns of Durham, Barrington, Farmington, Lee, Middleton, Milton, New Durham, Rollinsford and Strafford. In addition, the dispatch center provides fire dispatching services to the towns of Durham, Farmington and Middleton and EMS for the towns of Farmington and Middleton. Civilian employees that are supervised by a communications supervisor normally staff the position of Public Safety Dispatcher.

Dispatchers work under the "general direction of the Sheriff and the direct supervision of the communications supervisor." The duties, responsibilities, skills, and qualifications for the positions of part time Dispatcher and full time Dispatcher are essentially identical. See Association Exhibit A8.

46. The Job Description for the position of Public Safety and Communications Supervisor (Dispatch Supervisor) provides in part as follows:

This is highly responsible administrative and supervisory work, involved with planning, organizing and directing the operational activities of the full time and part time dispatchers assigned to the Strafford County Dispatch Center and management of the Center's comprehensive effort to provide effective and efficient services to the eight towns under agreement with Strafford County and to the general public. Work is performed under the general supervision of the Strafford County Sheriff, Captain or their designee.

See County Exhibit 7.

47. The duties and responsibilities of a Dispatch Supervisor include the following:

1. Exercises supervision over all full time and part time dispatchers employed by the Strafford County Dispatch Center.
2. Performs all duties required of a dispatcher, unless relieved by another dispatcher to perform administrative duties.
3. Responsible for all shifts being covered. If unable to locate a dispatcher to cover an open shift, Supervisor will cover the shift, with the dispatcher on duty required to stay on shift until the supervisor or designee arrives.
4. Responsible for completion of vouchers for payment of all dispatch bills.
5. Supervises all record keeping.
6. Responsible for the Dispatch Center's payroll completion.
7. Participates in the reviews of all personnel seeking employment at the Dispatch Center.
8. Responsible for the final stages of training new dispatchers and evaluation of performance.
9. Responsible for State Police SPOTS terminal, with the title from State Police "SPOTS Terminal Agency Officer". (TAC)
10. Responsible for entries into NCIC and Criminal Record Requests by Departments. Validation reports will be completed monthly and mailed to State Police Headquarters

with all NCIC regulations being adhered to. In the event an audit is required by NCIC, the Supervisor will be responsible for all records and files.

11. Responsible for monthly statistics of Dispatch Center activity.

12. Will be the liaison between the Chiefs of Police and the Dispatch Center. Any problems the officers have with dispatch will be reported to the Chief of Police and the Chief will discuss the problem with the Sheriff, who will in turn discuss the problem with the Dispatch Center Supervisor.

13. Attends Chiefs meetings at the request of the Sheriff to answer any questions regarding the Dispatch Center.

14. Responsible for dispatch equipment being in working order and having necessary repairs ordered.

15. Responsible for dispatchers following "FCC" Rules and Regulations.

16. Receives all suggestions and complaints from dispatchers and takes appropriate action.

17. Performs other duties as assigned by the Sheriff, Captain or their designee.

...

QUALIFICATIONS

Education: High school diploma or equivalent. Experience in a responsible supervisory capacity. ...

The Dispatch Supervisor's required skills and abilities include "ability to supervise others effectively" and "ability to prepare and administer an annual budget." See County Exhibit 7.

48. Janet Eldridge is the Dispatch Supervisor. Ms. Eldridge also performs duties and responsibilities of a Dispatcher. In her absence, which currently occurs one day per work week and during sick, vacation and other leave, the Assistant Dispatch Supervisor is in charge of the Dispatch Center.

49. Ms. Eldridge has authority to administer verbal warnings and counseling.

50. If there is a written complaint against a Dispatcher, Ms. Eldridge investigates it and then sends the case up the chain of command to Sgt. McGivern, the Captain, and the Sheriff. Ms. Eldridge often resolves telephone or verbal complaints against Dispatchers on her own.

51. The Job Description for the position of Assistant Public Safety and Communications Supervisor (Assistant Dispatch Supervisor) provides as follows:

This is highly responsible administrative and supervisory work, involved with planning, organizing and directing the operational activities of the full time and part time dispatchers assigned to the Strafford county Dispatch Center and management of the Center's comprehensive effort to provide effective and efficient services to the nine

towns under agreement with Strafford County and to the general public. Work is performed under the direct supervision of the Public Safety and Communications Supervisor and the general supervision of the Strafford County Sheriff, Captain, Sergeant or their designee.

DESCRIPTION OF DUTIES AND RESPONSIBILITIES

1. In the absence of the Public Safety and Communications Supervisor, exercises supervision over all full time and part time dispatchers employed by the Strafford County Dispatch Center.
2. Performs all duties required of a dispatcher, unless relieved by another dispatcher to perform administrative duties assigned by the Public Safety and Communications Supervisor.
3. Responsible for all shifts being covered. If unable to locate a dispatcher to cover an open shift, Supervisor or Assistant Supervisor will cover the shift, with the dispatcher on duty required to stay on shift until the Supervisor or Assistant Supervisor or their designee arrives.
4. As assigned by the Public Safety and Communications Supervisor, participates in the reviews of all personnel seeking employment at the Dispatch Center.
5. Responsible for assisting in training of new dispatchers.
6. Responsible for the State Police SPOTS terminal, when assigned by the Public Safety and Communications Supervisor, with the title from State Police "SPOTS Terminal Agency Coordinator" (TAC).
7. Responsible for entries into NCIC and Criminal Record Requests by Departments at the request of the Public Safety and Communications Supervisor.
8. When acting in the absence of the Public Safety and Communications Supervisor be the liaison between the Chiefs of Police and the Dispatch Center. Any problems the officers have with dispatch will be reported to the Chief of Police and the Chief will discuss the problem with the Sheriff, who will in turn discuss the problem with the Public Safety and Communications Supervisor or her designee.
9. In the absence of the Public Safety and Communications Supervisor be responsible for dispatch equipment being in working order and having necessary repairs ordered.
10. Responsible for dispatchers following "FCC" Rules and Regulations.
11. Performs other duties as assigned by the Public Safety and Communications Supervisor, the Sheriff, Captain, Sergeant or their designee.

Assistant Dispatch Supervisor's required skills and abilities include "ability to supervise others consistently and effectively." See County Exhibit 8.

52. Sarah Douglas has been employed by the Sheriff's Office since 2002 and became an Assistant Dispatch Supervisor in 2011. Since becoming an Assistant Dispatch Supervisor, she continues to perform Dispatcher's duties 40 hours a week. She is responsible for all scheduling for Dispatchers. The schedules are usually prepared at least 3 weeks in advance but sometimes

they have to be changed on short notice. She also makes sure that warrants are correct and acts as a coordinator for the National Crime Information Center (NCIC).

53. The Assistant Supervisor is the acting supervisor when Ms. Eldridge is absent for any reason. Ms. Douglas always calls Ms. Eldridge if there is an issue and defers to her decision.

54. Ms. Douglas became an Assistant Dispatch Supervisor eight months ago and has not yet evaluated other employees. According to Ms. Eldridge, she will conduct evaluations of Dispatchers in the future.

55. Although according to Sheriff Estes, she has authority to issue verbal warnings, Ms. Douglas has not yet played any role in disciplining Dispatchers. She has not taken any corrective measures on her own. When a Dispatcher is disciplined the process usually starts with the Dispatch Supervisor. Then, the issue goes to one of the Sergeants or the Captain and then to the Sheriff.

Decision and Order

Decision Summary

Part time Deputies assigned to the ICE are not irregular or on call employees within the meaning of RSA 273-A:1, IX (d). They share a community of interest with other employees in the proposed bargaining unit and are appropriately included in the bargaining unit. Two Sergeants, the Dispatch Supervisor, and the Assistant Dispatch Supervisor are supervisory employees within the meaning of RSA 273-A:8, II and are, therefore, excluded from the proposed bargaining unit. The bargaining unit is otherwise approved and this matter shall proceed to a representation election.

Jurisdiction

The PELRB has jurisdiction over all petitions to determine bargaining units and certify the exclusive representative of an approved bargaining unit through the process of a representation election pursuant to RSA 273-A:8, 273-A:10, and Pub 300.

Discussion

RSA 273-A:8 vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof. In this case, the County argues that part time Deputies assigned to the ICE should be excluded from the proposed bargaining unit because they are irregular or on call employees and, therefore, are not public employees within the meaning of RSA 273-A:1, IX. RSA 273-A:1, IX defines a public employee as “any person employed by a public employer except...(d) [p]ersons ... employed seasonally, irregularly, or on call.” The court has applied dictionary definitions for the terms “irregular” and “on call,” stating that “irregular” is defined as “lacking continuity or regularity of occurrence, activity, or function” and that “on call” means “ready to respond to a summons or command.” See *In re Town of Stratham*, 144 N.H. 429, 431 (1999). In *Stratham*, part time officers worked “substantial hours” but had no set day to work and only worked when a shift opened up because a full time officer was unavailable. See *id.* They were excluded from the bargaining unit under consideration because they were deemed “on-call employees who work on an irregular basis.” See *id.* In *International Brotherhood of Teamsters, Local 633 of N.H. and State of New Hampshire, Administrative Office of the Courts*, PELRB Decision No. 2009-048, the PELRB found that not all per diem Court Security Officers were irregular or on call employees within the meaning of RSA 273-A:1, IX (d). The PELRB differentiated between per diem officers who were scheduled to work on regular basis and those who were away from employment for extensive period of time without explanation or justification. See *id.* The fact that some employees worked as little as 1-2 days per week was not determinative. See *id.* “A reduced work schedule is the sine qua non, or essence, of part-time employment, and the fact of part-time employment is not enough, by itself, to exclude an employee from a proposed bargaining unit.” *Id.*

In the present case, the evidence is insufficient to prove that part time Deputies assigned to the ICE are irregular or on call employees who lack a community of interest with other employees in the bargaining unit.¹ The Deputies at issue here are more akin to per diem Court Security Officers included in the bargaining unit in the *Administrative Office of the Courts* case than to on call police officers in *Stratham*. The evidence here shows that the ICE-assigned Deputies' work schedule is far from being irregular. Unlike the schedule of employees in *Stratham*, the ICE-assigned Deputies' schedule does not depend on unavailability of other employees due to illness, vacation, or other absence. On the contrary, they work on a well established continuous 3-day rotation schedule: week one – Monday, Tuesday and Wednesday on ICE assignments; week two – Thursday, Friday and on call on ICE assignments; week three – off and available to be on call for the Sheriff's Office, if there are any hours left of 32-hour per week work limit. The evidence here shows that the ICE-assigned Deputies report to work to the Sheriff's Office regularly on weeks one and two of their schedule after which they go to the ICE office in Manchester to receive their assignments. They worked on average between 16 and 32 hours per week between June 23, 2012 and August 11, 2012. Furthermore, the County appointment letters show that part time Deputies assigned to the ICE have been appointment by the Sheriff's Office to work 16 hours a week and are eligible for certain benefits, including overtime, and sick, vacation, and holiday leave, on pro-rated basis. Although the part time Deputies currently assigned to the ICE are retired law enforcement employees, there is no requirement that only retired employees who can work no more than 32 hours per week be assigned to the ICE. Further, the evidence is insufficient to show that these positions were created specifically by the ICE and for the ICE or that, but for the ICE, these positions would not exist. The County's reliance on the argument that these part time Deputies are available for work

¹ Under Pub 201.06 (c), "[i]n all adjudicatory hearings under these rules, the party asserting the affirmative of a proposition shall bear the burden of proving the proposition by a preponderance of the evidence." Here, the burden is on the County to prove that part time Deputies assigned to the ICE are irregular or on call employees.

at the Sheriff's Office location only in week three of their schedule is misplaced because, even while on assignment to the ICE on weeks one and two of their schedule, these Deputies continue to be employed by the Sheriff's Office and not by the ICE. Such an assignment is not different from, for example, an undercover work assignment for a police department employee and does not divest an employee of a regular part time employment status. For the forgoing reasons, the part time Deputies assigned to the ICE are not irregular or on call employees within the meaning of RSA 273-A:1, IX (d).

The County also argues that the ICE-assigned Deputies should be excluded from the proposed bargaining unit because they do not share a community of interest with other employees in the unit.

"The principal consideration in determining an appropriate bargaining unit is whether there exists a community of interest in working conditions such that it is reasonable for the employees to negotiate jointly." *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995) (quoting *Appeal of the University System of New Hampshire*, 120 N.H. 853, 855 (1980)). RSA 273-A:8, I provides that

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.

(Emphasis added).

The PELRB rules provide additional criteria for determining whether a community of interest exists:

- (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.

Pub 302.02 (b). In addition to considering the principle of community of interest, the PELRB also takes into account the effect of forming any particular bargaining unit on the efficiency of government operations and the potential for employees within the proposed bargaining unit to experience a division of loyalties between the public employer and the employees' exclusive representative. See Pub 302.02 (c) (1) and (2).

"[T]he statutory framework which guides PELRB decisions is flexible, and gives much discretion to the PELRB's expertise. The statute and regulation require only that certain factors may be considered in determining whether a community of interest exists." *Appeal of University System of New Hampshire*, 131 N.H. 368, 374 (1988). Under the statute and regulations, "the PELRB need not find each criterion satisfied in order to find that a community of interest exists." *Appeal of Town of Newport*, 140 N.H. 343, 352 (1995).

In the present case, part time Deputies assigned to the ICE share a sufficient community of interest with other employees in the proposed bargaining unit. They are part time Deputies who share the same historic craft or profession with other part time as well as full time Deputies in the proposed unit. The primary duty of ICE-assigned Deputies as well as all other Deputies in the unit is prisoner transport. In addition, they function within the same organizational unit, the Sheriff's Office, as other employees in the proposed bargaining unit. ICE-assigned Deputies receive some of the same benefits as other employees in the proposed unit, including overtime, and holiday, vacation, and sick leave. They are paid the same hourly rate as other part time Deputies in the proposed bargaining unit and have the same professional and educational requirements/qualifications. Furthermore, ICE-assigned Deputies are covered by the same personnel rules and procedures, including grievance and disciplinary procedures, as other employees in the proposed bargaining unit. Based on the record and the applicable standards, there is a sufficient community of interest so that it is reasonable for the members of the

proposed bargaining unit to negotiate jointly. For the foregoing reasons, the inclusion of the Deputies assigned to the ICE in the bargaining unit is appropriate.

The County also argues that the Sergeants, the Dispatch Supervisor and the Assistant Dispatch Supervisor are supervisors within the meaning of RSA 273-A:8, II and should, therefore, be excluded from the bargaining unit. Under RSA 273-A: 8, II, “[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise.” Statutory supervisory employees are separated from the employees they supervise “to avoid conflicts between the two groups because of the differing duties and relationships which characterize each group.” *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999). See also *New England Police Benevolent Association, Inc., Local 50 et al. v. State of New Hampshire, Department of Safety, DMV*, PELRB Decision No. 2006-169; *New England Police Benevolent Association, IUPA, AFL-CIO v. Town of Hillsborough*; PELRB Decision No. 2010-112.

A supervisory relationship within the meaning of RSA 273-A:8, II exists “when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion.” *International Chemical Workers Union Council and Hillsborough County Nursing Home*, PELRB Decision No. 1999-079. Employees with certain authority are supervisors under RSA 273-A:8, II “regardless of whether it is presently exercised.” See *Appeal of University System of N.H.*, 131 N.H. 368, 376 (1988). “[S]ome 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. 607, 611 (1993). See also *Hampstead Police Union, NEPBA Local 37 and Town of Hampstead*, PELRB Decision No. 2008-071. In determining whether an employee is vested with the supervisory authority involving the significant exercise of discretion, important factors to consider include “the

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. at 432. See also *NEPBA, Inc. Local 40/NH Fish & Game Conservation Officers et al. v. SEA/SEIU Local 1984*, PELRB Decision No. 2006-174; *Teamsters Local/Plaistow Town Employees v. Town of Plaistow*, PELRB Decision No. 2010-062.

In the present case, the evidence shows that the Sergeants, the Dispatch Supervisor, and the Assistant Dispatch Supervisor are employees vested with "supervisory authority involving the significant exercise of discretion." The Transport Division Sergeant evaluates Deputies assigned to the Transport Division, adjusts their work schedules, and approves their leave requests. The Civil Division Sergeant evaluates Deputies assigned to the Civil Division. According to the job description, Sergeants supervise the daily work assignments of, among other, Civil Division Deputies, Court Security Deputies, and prisoner transports and assume command of an incident or event until the Captain or Sheriff arrives. Evaluations prepared by Sergeants are taken into consideration in promotion decisions and are placed in employees' personnel files. Sergeants have authority to issue verbal warnings and to recommend disciplinary actions and commendations. In the absence of the Sheriff and the Captain, the Transport Division Sergeant, and in his absence, the Civil Division Sergeant, assumes command in the Sheriff's Office. For the foregoing reasons Sergeants are supervisory employees within the meaning of RSA 273-A:8, I and are excluded from the bargaining unit.

Job Descriptions for the Dispatch Supervisor and the Assistant Dispatch Supervisor provide in part that these positions involve responsible administrative and supervisory work, which includes planning, organizing and directing the operational activities of the full time and part time Dispatchers and management of the Dispatch Center's services. Skills and qualifications for both positions require the "ability to supervise others." The Dispatch Supervisor evaluates performance of full time and part time Dispatchers. According to the job

description, Dispatch Supervisor's responsibilities include providing coverage for all shifts; participating in the reviews of all personnel seeking employment at the Dispatch Center and in the final stages of training of new Dispatchers and evaluation of performance; and taking appropriate actions regarding Dispatchers' complaints. The Dispatch Supervisor has authority to issue verbal warnings, recommend discipline, and conduct investigations of, and resolve, verbal complaints against Dispatchers. The Assistant Supervisor is an acting supervisor when the Dispatch Supervisor is absent for any reason. In the Dispatch Supervisor's absence, which currently occurs one day per work week and during sick, vacation and other leave, the Assistant Dispatch Supervisor assumes responsibilities to supervise full time and part time Dispatchers and to make sure all shifts are being covered. According to the job description, the Assistant Dispatch Supervisor participates in the reviews of all personnel seeking employment at the Dispatch Center, as assigned by Dispatch Supervisor, and assists in the training of new Dispatchers. Although the Assistant Dispatch Supervisor have not yet conducted annual performance evaluations because she has been employed in this position for less than a year, the Dispatch Supervisor testified that the Assistant Dispatch Supervisor will be conducting performance evaluations of Dispatch Center employees in the future. For the foregoing reasons, the Dispatch Supervisor and the Assistant Dispatch Supervisor are supervisory employees within the meaning of RSA 273-A:8, II and are, therefore, excluded from the bargaining unit.

The County also objects to the inclusion of probationary employees in the bargaining unit. Under RSA 273-A:1, IX (d) persons in a probationary status are not "public employees." However, "no employee shall be determined to be in a probationary status who shall have been employed for more than 12 month or who has an individual contract with his employer." See RSA 273-A:1, IX (d). Furthermore, RSA 273-A:8, I provides that for the purposes of determining the appropriate bargaining unit, "probationary employees shall be counted to satisfy the employee minimum number requirement." RSA 273-A:8, I further provides that "[i]n no case


shall such probationary employees vote in any election conducted under the provisions of this chapter to certify an employee organization as the exclusive representative of a bargaining unit.”

For the forgoing reasons, probationary employees as defined in RSA 273-A:1, IX (d) are not included in the bargaining unit until their status changes to permanent and shall not vote in the representation election to determine the exclusive representative of the approved bargaining unit.

Accordingly, this case shall proceed to a secret ballot election to determine the exclusive bargaining representative, if any, of the following approved bargaining unit: Deputy (full time and part time), Dispatcher (full time and part time), and Secretary. An Order for Election shall be issued and a pre-election conference shall be scheduled in accordance with Pub 303.02.

So ordered.

November 19, 2012



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