



State of New Hampshire
Public Employee Labor Relations Board

Internal Affairs Association of New Hampshire
and
State of New Hampshire, Department of Corrections
and
SEA, SEIU Local 1984
Case No. G-0258-2
Decision No. 2018-020

Appearances:

J. Joseph McKittrick, Esq., McKittrick Law Offices, North Hampton, NH,
for the Internal Affairs Association of New Hampshire

Nancy J. Smith, Esq., Office of Attorney General, Concord, NH, for the
State of New Hampshire, Department of Corrections

Glenn R. Milner, Esq., General Counsel, State Employees' Association of
NH, Inc., SEIU Local 1984, Concord, NH for the SEA, SEIU Local 1984

Background:

On November 2, 2017, the Internal Affairs Association of New Hampshire (IAANH) filed a petition for certification seeking to represent certain employees of the State of New Hampshire, Department of Corrections (State) whom they also seek to remove from the existing bargaining unit represented by the State Employees' Association of New Hampshire, SEIU Local 1984 (SEA). See PELRB Decision No. 2018-019. The IAANH proposed the following bargaining unit: "Department of Corrections Internal Affairs Investigators I, II, III and

Administrative Secretary - Investigations.”¹ The petition for certification is supported by the requisite number of confidential authorization cards as reflected in the November 6, 2017 PELRB Report re: Inspection of Confidential Authorization Cards.

The State objects to the petition claiming that the Administrative Secretary - Investigations lacks a community of interest with Internal Affairs Investigators in the proposed bargaining, and that, without the Administrative Secretary, the unit does not contain a minimum of ten employees as required under RSA 273-A:8.

The SEA objects on the grounds that the proposed unit lacks a community of interest and that the creation of a new bargaining unit will lead to a unit proliferation which will negatively affect the efficiency of government operations.

A hearing on the objections to the petition was conducted on December 19, 2017 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. The parties filed post-hearing briefs on January 17, 2018; and the decision is as follows.

Findings of Fact

1. The State is a public employer within the meaning of RSA 273-A:I, X.
2. The IAANH is an employee organization seeking to represent the proposed bargaining unit consisting of the following New Hampshire Department of Corrections (DOC) positions: Internal Affairs Investigators I, II, III (IA Investigators) and Administrative Secretary – Investigations (IA Administrative Secretary). These positions are currently included in the

¹ On September 18, 2017, the IAANH filed a petition for certification seeking to represent the following proposed bargaining unit: DOC Internal Affairs Investigators I, II, and III. The State objected to the petition on the ground that the proposed unit did not contain the requisite number of employees (10). The SEA objected on the ground, among others, that allowing the petition would lead to a proliferation of bargaining units. On October 20, 2017, the IAANH withdrew its petition. See PELRB Decision 2017-189 (Case No. G-0258-1).

following DOC bargaining unit represented by the SEA: All classified employees with the exception of those classified employees excluded from the definition of public employee under the provisions of RSA 273-A:1, IX. See PELRB Decision No. 2004-037 (May 6, 2004). See also exclusion list in PELRB Decision No. 2017-201 (December 4, 2017).

3. The proposed unit contains ten employees: nine IA Investigators and one IA Administrative Secretary.

4. In addition to the "all classified employees" unit represented by the SEA, the DOC has four other bargaining units: Probation and Parole Officer Supervisors represented by the NEPBA, Local 270 (PELRB Decision No. 2010-002); Probation and Parole Officers represented by the NEPBA, Local 265 (PELRB Decision No. 2010-003); Corrections Officers represented by the Teamsters Local Union 633 (PELRB Decision No. 2012-226); and Supervisory Corrections Officers represented by the SEA (PELRB Decision No. 2010-004). In addition, the SEA represents the State supervisory employees unit which includes DOC supervisors not covered by the units listed above. See PELRB Recognition of Exclusive Representative, Case No. S-0349 (March 31, 1997).

5. The IA Investigators and the IA Administrative Secretary work for the DOC and are in the same SEA-represented bargaining unit. This bargaining unit also contains other DOC civilian employees, including, e.g., kitchen staff, who, in contrast to the IA Investigators, are not certified Corrections Officers and do not fall under the same retirement group or receive the same fringe benefits as IA Investigators.

6. The IA Administrative Secretary and IA Investigators have been in the same bargaining unit, and have been covered by the same consecutive collective bargaining agreements (CBAs), for over 10 years.

7. The IA Investigators have one central office in Concord and a satellite office in

Berlin. Three of the IA Investigators work out of the Berlin office but frequently visit the Concord office. The IA investigation unit's documents are kept in the Concord office. Regular meetings are conducted in the Concord office.

8. IA Investigators investigate alleged inmate criminal activity and conduct internal affairs investigations of the DOC staff, including other employees in the "all classified employees" unit represented by the SEA.

9. The IA Investigators, but not the IA Administrative Secretary or other civilian employees in the "all classified employees" unit, are required to possess and maintain certification as Corrections Officers issued by the Police Standards and Training Council.

10. Liell O'Rourke is the IA Administrative Secretary. She has been working in this position for 12 years. She works closely with the IA Investigators but not with other employees in the "all classified employees" bargaining unit.

11. The IA Administrative Secretary's workstation is in the Concord IA Investigators' office. As part of her job duties, she transcribes investigation recordings, puts them on disks (DVD and CD), labels them, and mails them out. She assists IA Investigators in preparing case files for courts and in putting reports and cases together. Her job requires expertise in preparation of internal investigation cases and files but it does not require a certification as a Corrections Officer. She works without close supervision by administrators outside the IA office. She regularly interacts with IA Investigators in performing her duties.

12. Like many other civilian employees in the "all classified employees" bargaining unit, the IA Administrative Secretary does not work with inmates, does not receive a \$200 clothing allowance or a hazardous pay supplement that the IA Investigators receive, and she does not belong to the same retirement group as the IA Investigators.

13. The terms and conditions of employment for both the IA Investigators and the IA Administrative Secretary are established in the SEA-State CBA and State personnel rules and procedures. The CBA covers such terms and conditions of employment as work hours, holidays, annual, sick, and other leave, grievance procedure, employee records and rights, health insurance, and wages. The same disciplinary and other procedures cover the IA Investigators and the IA Secretary.

14. Due to the nature of their work, the IA Investigators and IA Administrative Secretary do not share self-felt community of interest with other employees in the "all classified employees" unit or in other DOC units.

15. There is a self-felt community of interest between the IA Investigators and the IA Administrative Secretary.

16. Matthew Newland is the Manager of Employee Relations for the State of New Hampshire and the State's Chief Negotiator. As part of his responsibilities, he negotiates CBAs between the unions representing state employees and the State. While Mr. Newland noted a significant increase in the number of State employee bargaining units as compared with the 1970s when the Public Employee Labor Relations Act, RSA 273-A, first went into effect, he did not offer any additional testimony concerning the existing, or potential, negative effect of the increase in the number of bargaining units on the efficiency of government operations.

Decision and Order

Decision Summary

The IA Administrative Secretary has a community of interest with the IA Investigators and the proposed bargaining unit is otherwise appropriate under RSA 273-A:8. The IAANH's petition for representation election is granted.

Jurisdiction

The PELRB has jurisdiction to determine the appropriate bargaining units pursuant to RSA 273-A:8 and Pub 302.

Discussion

The New Hampshire legislature has recognized the “right of public employees to organize and to be represented for the purpose of bargaining collectively with the state or any political subdivision thereof ...’ Laws 1975, 490:1.” See *Appeal of International Brotherhood of Police Officers*, 148 N.H. 194, 196 (2002). RSA 273-A:8, I vests the PELRB with the authority to determine the appropriate bargaining unit and certify the exclusive representative thereof. The primary 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)).

In its objection to the IAANH’s petition for certification, the State argues that the IA Administrative Secretary does not share a community of interest with the IA Investigators as required under RSA 273-A:8. 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.

In no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest. For purposes of this section, probationary employees shall be counted to satisfy the employee minimum number requirement...

(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.

See Pub 302.02 (b). “[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) (emphasis in original). 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). Furthermore, the clear and unambiguous statutory language indicates that satisfaction of just one of the criteria listed in RSA 273-A:8, I may be sufficient to establish a requisite community of interest.

In the present case, there is a sufficient community of interest between the members of the proposed bargaining unit. The IA Investigators and the IA Administrative Secretary function within the same organizational unit (the Department of Corrections, Internal Affairs office), are covered by the same personnel rules, policies, and procedures (e.g. disciplinary rules, grievance procedures), work in the same geographic location, and have substantially the same terms and conditions of employment set forth in the CBA and the State personnel rules (e.g. hours, holidays, sick and annual leaves, health insurance). The members of the proposed unit interact with each other on regular basis and exhibit a self-felt community of interest. In addition, because these employees have been in the same bargaining unit for a significant number of years,

and have been covered by the same consecutive CBAs, they also share “a history of workable and acceptable collective negotiations.” Based on the foregoing, the IAANH has met its burden of proving the existence of a sufficient community of interest so that it is reasonable for the members of the proposed bargaining unit to negotiate jointly.

The State argues, among other things, that the IA Administrative Secretary and the IA Investigators lack a community of interest because they receive different training and fall under different retirement groups, and because the IA Administrative Secretary does not work directly with inmates and does not receive the hazardous pay or clothing allowance that the IA Investigators receive. However, this argument is unpersuasive as the existence of some differences in terms or conditions of employment is not the test for determining the existence of a community of interest. Rather, “the community of interest may be exhibited by *one* or more of the ... criteria” enumerated in RSA 273-A:8, I and, in this case, the community of interest between the IA Investigators and the IA Administrative Secretary has been exhibited by more than one of the relevant criteria as set forth above. Furthermore, the State’s argument is undermined by the fact that, for many years, the IA Investigators have been in the same bargaining unit with other DOC civilian employees who likewise did not receive the same training or hazardous pay or clothing allowance as the IA Investigators.

Further, the State’s argument that law enforcement bargaining units do not commonly contain administrative/clerical employees is also without merit. There are numerous law enforcement bargaining units that contain administrative secretaries, clerks and other administrative employees. See e.g. *AFSCME Local 3657, Hillsborough County Dept. of Corrections Employees & Hillsborough County*, PELRB Decision No. 2004-177 (account clerk, clerk typist, and secretary in same unit with correction officers); *NCEU & Hillsborough County Department of Corrections & Teamsters Local 633 of New Hampshire*, PELRB Decision No.

2016-292 (corrections lieutenants and sergeants in same unit with account clerks II and secretary II); *AFSCME Local 3657, Hillsborough County Sheriff's Office & Hillsborough County*, PELRB Decision No. 2004-143 (deputy sheriffs in same unit with secretaries and clerk typists); *Teamsters Local 633 of New Hampshire & Belknap County Commissioners & SEA, SEIU Local 1984, Belknap County Sheriff's Dept*, PELRB Decision No. 2016-064 (dispatchers and civil clerk in same unit with deputy sheriffs); *Dover Police Association & City of Dover*, PELRB Decision No. 2004-013 (clerk-typists and secretary in same unit with police officers); *SEA, SEIU Local 1984 & Merrimack County Dept of Corrections*, PELRB Decision No. 2017-004 (maintenance worker and corrections nurse in same unit with corrections officers); *Somersworth Police Union, NEPBA Local 19 & Somersworth Police Dept.*, PELRB Decision No. 2006-087 (secretaries in same unit with police officers); *Teamsters Local 633, UNH Police Officers & UNH Police Dept.*, PELRB Decision No. 2006-076 (administrative assistants in same unit with police officers); etc.

Finally, in its objection to the petition, the incumbent exclusive representative SEA argues, among other things, that carving out of the IA Investigators unit from the "all classified employees" will lead to a proliferation of bargaining units and will, therefore, negatively affect the efficiency of government operations.² Assuming, arguendo, that the SEA has standing to raise this argument, there is no evidence in this case that the creation of the IA Investigators' unit will have a negative effect on the efficiency of government operations. Although the State's Chief Negotiator and Manager of Employee Relations Matthew Newland testified at the hearing that there are a lot more State employee bargaining units now than there were at the time RSA

² Pub 302.02 (c) (1) provides that "[i]n addition to considering the principle of community of interest, the board shall also consider ... the effect of forming any particular bargaining unit on the efficiency of government operations as contemplated in RSA 273-A:1, XI."

273-A was enacted, no testimony or other evidence was offered to demonstrate that the formation of this unit will adversely impact the efficiency of government operations. See also RSA-A:9.³

Moreover, a similar proliferation argument was rejected by the PELRB in *NEPBA, Inc., Local 270 et al and State of New Hampshire Department of Corrections and State Employee Association of NH, Inc., SEIU Local 1984*, PELRB Decision No. 2009-216 (October 8, 2009). In this case, the SEA raised an objection to the NEPBA's certification and modification petitions on the ground that a proliferation of bargaining units will result in inefficiency in government operations. The PELRB found, among other things, that the evidence was insufficient to support this claim and overruled the SEA's proliferation objection. Similarly, in *Appeal of the University System of New Hampshire*, 120 N.H. 853, 855 (1980), the Supreme Court, while agreeing with the PELRB's concern regarding the "need for governmental efficiency, which could be adversely affected by a proliferation of small bargaining units," affirmed the PELRB's determination that the proposed small "operations and maintenance" bargaining unit carved out from a larger UNH bargaining unit was an appropriate unit. The Court stated that:

The legislature, by enacting RSA ch. 273-A, has established the right of public employees to organize and be represented for the purpose of bargaining collectively. See Laws 1975. 490:2. It must have known that added burdens would be placed upon the agencies of the State and that increased costs of government would result from the competition among unions and from the time consumed in both the collective bargaining process and litigation before the board and before this court on appeal over issues created by the statute.

Id. See also *Appeal of University System of New Hampshire*, 131 N.H. 368, 374-75 (1988) (affirming PELRB's finding that smaller bargaining unit was appropriate despite employer's objection on unit proliferation grounds).

³ RSA-A:9 minimizes the effect of multiple bargaining units on the State's ability to negotiate as it requires that all unions representing different state employee bargaining units negotiate with the state through a "single employee bargaining committee comprised of exclusive representatives of all interested bargaining units."

As was true in *Appeal of University System of New Hampshire and NEPBA, Inc., Local 270 et al. and State of New Hampshire Department of Corrections and State Employee Association of NH, Inc., SEIU Local 1984*, the evidence in this case is insufficient to prove that the creation of the proposed bargaining unit will have a negative effect on government operations.⁴

Based on the foregoing, the proposed bargaining unit contains 10 employees with the same community of interest as required under RSA 273-A:8, I. The State's and the SEA's objections to the petition for certification are overruled, and the following bargaining unit is approved: Internal Affairs Investigators I, II, III and Administrative Secretary – Investigations. Accordingly, the IAANH's request for an election to resolve a question of representation and to determine the exclusive representative of the bargaining unit, if any, is granted. The ballot shall contain the following three choices: "Internal Affairs Association of New Hampshire," "State Employees' Association of New Hampshire, Inc., SEIU Local 1984," and "No Representative." An Order for Election shall issue in due course and a pre-election conference shall be conducted in accordance with Pub 303.02.

So ordered.

Date: 2/28/2018



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⁴ No argument, or evidence, was offered in this case concerning the "potential for employees within the proposed unit experiencing a division of loyalties between the public employer and the employees' exclusive representative." See Pub 302.02 (c)(2). Based on the record, I find that there is no evidence of such potential in this case.