



State of New Hampshire
Public Employee Labor Relations Board

State Employees' Association of NH, Inc., SEIU Local 1984

and

Strafford County

Case No. G-0284-1

Decision No. 2020-003

Appearances:

Gary Snyder, Esq., Concord, NH, for the State Employees' Association of NH, Inc., SEIU Local 1984

Sheriff David Dubois, Dover, NH, for the Strafford County Sheriff's Department.¹

Background:

On August 14, 2019, the State Employees' Association of NH, Inc., SEIU Local 1984 (Union) filed a petition for certification seeking to represent certain employees of the Strafford County Sheriff's Department (County). The Union proposes the following bargaining unit: Captains, Lieutenants, Sergeants, Communications Director, and Communications Supervisors. The petition for certification is supported by the requisite number of confidential authorization cards as reflected in the August 29, 2019 PELRB Report re: Inspection of Confidential Authorization Cards.

The County objects to the petition for the following reasons:

¹ Gary W. Wulf filed an appearance as the County representative in this case. However, on the day of the hearing, the undersigned hearing officer was informed that Mr. Wulf would not be able to attend the hearing for health-related reasons. The parties were offered a chance to continue the hearing but chose to proceed. Sheriff Dubois averred that he was fully familiar with the case and ready to represent the County at the hearing.

... The Sheriff's Office is a constitutional office within the County organizational structure. It is administered by an elected Sheriff. All of the decisions regarding labor relations are his. As most law enforcement agencies, a chain of command is inherent. The petition, as filed, contains no listed exclusions, however a review of the department's organization chart reveals there are only two (2) positions not included in the proposed unit, that of the Sheriff and one part-time Chief Deputy.

The proposed unit included twelve (12) positions within the new collective bargaining unit. Captains and the Communications Director are among the twelve (12) petitioned for inclusion. That would leave an elected Sheriff and one ranking part-time officer as the only non-union supervisory personnel within the organization.

The Sheriff's Office, (Strafford County) objects to the inclusion of Captains and Communication Director in the proposed new bargaining unit. It is illogical and impractical to certify a supervisory unit that cripples the public employer's ability to perform their mission.

See August 26, 2019 County Exception and Objections to Petition for Certification. No other objections or exceptions have been file in this case.

On September 3, 2019, the Union filed a response to the County's objection stating in part as follows:

...[T]he County fails to provide any facts or details as to why the Sheriff's office would not be able to function, but seems to indicate that the reason is due to a lack of staffing in upper management. Such argument is not a valid reason under the relevant labor law or regulations, but even if it were, the County has failed to identify a single function or operation that will be in jeopardy if the unit were certified as proposed.

See September 3, 2019 Union Response to the County Objection to Certification Petition.

The County did not ask to amend its objection/exceptions either prior to or after the hearing.

A hearing on the County's objection was originally scheduled for September 20, 2019 but, at the parties' request, was continued twice. The hearing was held on November 5, 2019 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. At the beginning of the hearing, the parties were informed that the undersigned hearing officer would not consider any new objections or exceptions presented for the first time

at the time of hearing because the County had ample time and opportunity to present any objections/exceptions it had and because presenting new objections at the time of hearing would be highly prejudicial to the opposing party. The decision is as follows².

Findings of Fact

1. The County is a public employer within the meaning of RSA 273-A:I, X.
2. The Union is an employee organization seeking to represent the proposed bargaining unit consisting of the following County Sheriff's Department positions: Sheriff Captains (2 employees), Sheriff Lieutenants (2 employees), Sheriff Sergeants (5 employees), Sheriff Communications Director (1 employee), and Sheriff Communications Supervisors (2 employees). The proposed unit has 12 employees. See October 3, 2019 Statement of Stipulated Facts at D.
3. All employees in the proposed bargaining unit work for the Sheriff's Department. See October 3, 2019 Statement of Stipulated Facts at E.
4. All employees in the proposed bargaining unit work in the same geographic location. See October 3, 2019 Statement of Stipulated Facts at F.
5. The County agrees that "[t]he employees listed in the Certification Petition are public employees as defined by RSA 273-A:1 (IX)." See October 3, 2019 Statement of Stipulated Facts at B. Therefore, the County stipulates that the employees in the proposed bargaining unit are not confidential, on call, temporary, seasonal, or irregular.

²During the hearing, the County attempted to introduce evidence going beyond the scope of its objection despite the hearing officer's warning that the hearing was limited to the issue raised in the objection and despite the fact that the Union's objection to the introduction of such evidence was granted during the hearing. However, the County failed to request to amend its answer at the conclusion of the hearing "as necessary to conform to the evidence." See Pub 201.04 (c). Therefore, this decision does not rely on any evidence that goes beyond the scope of the issue raised in the objection.

6. All employees in the proposed bargaining unit function within the same organizational unit, the County Sheriff's Department.

7. All employees in the proposed bargaining unit have the same terms and conditions of employment, are covered by the same work rules, policies and procedures, and have common wage and benefit structures. The Strafford County Personnel Policies Manual governs terms and conditions of employment of all employees in the proposed bargaining unit. The Manual covers such term and conditions of employment as shift differentials, overtime, layoffs, sick leave, vacation leave, health insurance, dental insurance, longevity pay, etc.

8. All employees in the proposed bargaining unit are in the same profession, law enforcement.

9. Employees in the proposed bargaining unit interact on daily basis and exhibit a strong self-felt community of interest.

10. The County does not dispute that the employees in the proposed bargaining unit share a community of interest.

11. The County Sheriff's Department has another bargaining unit which includes Sheriff's Deputies and Dispatchers.

12. The head of the Sheriff's Department is High Sheriff David Dubois. He is not on the County negotiating team but, if necessary, could get involved in negotiations. Sheriff Dubois has the authority to discipline, promote, demote, suspend, and terminate employees in the proposed bargaining unit.

13. Usually, after a tentative agreement for the existing Deputies' unit is reached, it is presented for approval to Sheriff Dubois, and then to the County Commission, which consist of three members. The costs associated with the agreement must also be approved by the County

Delegation.

14. Labor Relations Consultant Gary W. Wulf is a member of the County negotiating team. For a number of years, he has been in charge of the County's collective bargaining negotiations and he has been advising the County on other labor-related issues. See e.g. PELRB Decision No. 2012-254 (November 19, 2012). Mr. Wulf regularly advises the other members of the negotiating team as to whether their bargaining proposals comply with the law and regulations and should be presented at the bargaining table. Mr. Wulf is not a public employee and is not included in any bargaining unit.

15. Joseph McGivern is the Chief Deputy for the Sheriff's Department. He is the second in command and a member of the County's negotiating team. His position is not included in the proposed bargaining unit.

Decision and Order

Decision Summary

The employees in the proposed bargaining unit have a sufficient community of interest such that it is reasonable for them to negotiate jointly; and the bargaining unit satisfies the ten employee-minimum requirement under RSA 273-A:8. The Union's petition for representation election is granted.

Jurisdiction

The PELRB has jurisdiction to determine 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 appropriate bargaining units and certify an exclusive representative thereof.

The threshold determination here is whether the employees in the proposed bargaining unit are “public employees” within the meaning of the Public Employee Labor Relations Act, RSA 273-A. RSA 273-A:1, IX defines a “public employee” as “any person employed by a public employer except:

- a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;
- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

The employees in this case don’t fall within any of the categories listed above by the County’s own admission and both parties agree that these employees are public employees within the meaning of RSA 273-A:1, IX.

The next question is whether the employees in the proposed bargaining unit share a community of interest as required under RSA 273-A:8, I. “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*, supra, 140 N.H. at 352. RSA 273-A:8, I provides that:

[T]he 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). “[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*, *supra*, 140 N.H. at 352.

In the present case, all employees in the proposed bargaining unit, function within the same organizational unit, the Sheriff’s Department, and are in the same historical craft or profession, the law enforcement. Furthermore, they work in the same geographic location and have the same terms and conditions of employment. Common work rules and personnel practices apply to all employees in the bargaining unit. In addition, there is self-felt community of interest among employees of the proposed bargaining unit. Therefore, the employees in the proposed bargaining unit share a community of interest in working conditions such that it is reasonable for

them to negotiate jointly.

The County agrees that the employees in the proposed bargaining unit share a community of interest. However, it objects to the Union's petition. Administrative Rule Pub 301.01 (p) provides in relevant part that "[e]xceptions shall set out a clear and concise explanation of any factual or legal reasons why the board should not entertain the petition."³ The County's objection in this case contains neither clear factual nor clear legal reasons. The County states in its objection that the "Sheriff's Office is a constitutional office within the County organizational structure" administered by "an elected Sheriff"; that "all of the decision regarding labor relations are his"; and that "it is illogical and impractical to certify a supervisory unit that cripples the public employer's ability to perform their mission." In its objection, the County does not claim that the bargaining unit inappropriately includes statutory supervisory employees (RSA 273-A:8) or statutory confidential employees (RSA 273-A:1, IX (c)). On the contrary, the County admits that all employees in the proposed bargaining unit are public employees within the meaning RSA 273-A:1, IX, i.e., not "persons whose duties imply a confidential relationship to the public employer." RSA 273-A:1, IX (c). The County also agrees with the Union that the employees in the proposed bargaining unit share a community of interest.

It is unclear what relevance the County assigns to the fact that the Sheriff's Department is a "constitutional office" administered by "elected Sheriff" but the County appears to argue that because the Sheriff is an elected official, he cannot be involved in collective bargaining negotiations and can "abdicate" his managerial authority to anyone in the Sheriff's Department. However, the County offers no law to support this assertion. In fact, the evidence shows that many functions related to collective bargaining and other labor-relations issues, including

³An administrative agency "must follow its own rules and regulations ..." See *Appeal of State Employees' Ass'n of N.H., Inc.*, 156 N.H. 426, 428 (2007).

strategic planning and negotiations, are performed by County Labor Consultant Gary W. Wulf⁴ and not employees in the proposed bargaining. Furthermore, if these assertions were true, no public employee working for the Sheriff's Department (from a Deputy to the Chief Deputy) could ever avail himself/herself of the right to organize granted by RSA 273-A.

In addition, nothing in RSA 273-A prohibits managerial/supervisory employees from organizing and bargaining collectively, as long as these employees are public employees with the same community of interest. The only limitation affects persons who are supervisors within the meaning of RSA 273-A:8, I and who may not be placed in the same bargaining unit as the employees they supervise, but they may belong to the bargaining unit consisting of other supervisory level employees.⁵

In this case, the County failed to satisfy its burden⁶ to prove that the creation of the proposed bargaining unit will "cripple" the Sheriff Department's ability to perform its mission and its objection is insufficient to outweigh the public employees' statutory right to select an exclusive representative and bargain collectively.

⁴Mr. Wulf is a highly experienced labor relations expert who has been advising and representing many public employers for over 30 years. See e.g. PELRB Decisions Nos. 83-01, 84-90, 91-12, 97-085, 2012-054.

⁵See, for example, PELRB Decision No. 2018-031 (bargaining unit consisting of State of NH Dept. of Safety, Division of State Police Majors, Captains, and Lieutenants); PELRB Decision No. 2018-090 (bargaining unit consisting of State of NH Dept. of Corrections Captains, Lieutenants, Sergeants, and Internal Affairs Investigators); PELRB Decision No. 2016-292 (bargaining unit consisting of Hillsborough County Corrections Lieutenants, Sergeants, and Work Release Supervisor, among others); PELRB Decision No. 2012-058 (bargaining unit consisting of City of Dover Police Captains, Lieutenants, Sergeants, Supervisors, and Communications Supervisor, among others); PELRB Decision No. 2006-196 (bargaining unit consisting of State of NH Fish and Game Dept. Colonels Majors, Captains, and Lieutenants, among others); PELRB Decision No. 2002-014 (bargaining unit consisting of City of Manchester Police Captains, Lieutenants, Sergeants, and Dispatch Supervisors, among others); PELRB Certification and Order to Negotiate, Case No. F-0117 (April 23, 1980) (bargaining unit consisting of Dover Fire Department Captains, Lieutenants, and Deputy Chiefs); etc.

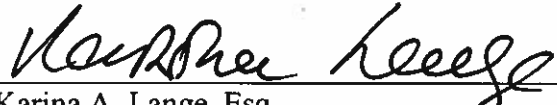
⁶Admin. Rule Pub 201.06 (c) provides that in all adjudicatory hearings the party asserting the affirmative of a proposition, like the County here, "shall bear the burden of proving the proposition by a preponderance of the evidence."

For the foregoing reasons, the County's objection is denied. The following bargaining unit is approved: Sheriff Captains, Sheriff Lieutenants, Sheriff Sergeants, Sheriff Communications Director, and Sheriff Communications Supervisors. The proposed bargaining unit contains 12 employees with the same community of interest as required under RSA 273-A:8, I.⁷ Accordingly, the PELRB will conduct a secret ballot election pursuant to RSA 273-A:10 to determine the exclusive representative of the approved unit, if any. "State Employees' Association of NH, Inc., SEIU Local 1984" and "No Representative" will appear as choices on the ballot. An Order for Election shall issue in due course and a pre-election conference shall be conducted pursuant to Pub 303.02.

So ordered.

Date:

1/3/2020


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

Distribution: Gary Snyder, Esq.
Raymond Bower, County Administrator
Gary W. Wulf, Labor Consultant

⁷RSA 273-A:8, I provides in relevant part that "[i]n no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest."