



State of New Hampshire
Public Employee Labor Relations Board

Professional Fire and Police Officers Association of Bedford

and

Town of Bedford

Case No. G-0307-1
Decision No. 2022-068

Appearances:

John Krupski, Esq., Concord, NH, for the Professional Fire and Police Officers Association of Bedford

Anna B. Cole, Esq., Drummond Woodsum & MacMahon, P.A.,
Manchester, NH, for the Town of Bedford

Background:

On December 6, 2021, the Professional Fire and Police Officers Association of Bedford (Association or Union) filed a petition to certify a bargaining unit comprised of certain employees of the police and fire departments of the Town of Bedford. The petition for certification is supported by the requisite number of confidential authorization cards. See December 30, 2021 PELRB Report re: Inspection of Confidential Authorization Cards.

The Association proposes the following bargaining unit: Fire Captain, Police Lieutenant, and Building/Health Code Official. The Town objects to the petition on the ground that the proposed bargaining unit lacks a community of interest as required under RSA 273-A:8.¹

¹The Town originally filed a motion to dismiss on the ground that the proposed unit contained fewer than 10 employees contrary to the requirements of RSA 273-A:8. However, after the Association amended its original petition by adding the positions of Building/Health Code Official and Animal Control Officer to the proposed unit, the Town withdrew its motion to dismiss. See PELRB Decision No. 2022-017. The Town also objected to the unit

A hearing on the Town's objection was conducted on March 11, 2022 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 April 22, 2022; and the decision is as follows.

Findings of Fact

1. The Town of Bedford is a public employer within the meaning of RSA 273-A:I, X. The Town is an incorporated political subdivision of the State with a Town Manager/Town Council form of government, including but not limited to, a police department and a fire department. See Stipulated Facts at B.

2. The Association is an employee organization seeking to represent the proposed bargaining unit consisting of the following positions: Police Lieutenant, Fire Captain, and Building/Health Code Official. The Town currently employs three Police Lieutenants, six Fire Captains, and one Building/Health Code Official. The Police Captain position, as well as an additional Police Lieutenant position, are currently temporarily vacant. See Stipulated Facts at J.² At the time of the hearing, the proposed bargaining unit contained 10 employees.

3. The Town has other certified bargaining units, including a police officers' unit, a fire department employees' unit, and a public works department employees' unit, and has been negotiating collective bargaining agreements and otherwise successfully cooperating with other

on the ground that the Police Lieutenant is a supervisory employee within the meaning of RSA 273-A:8, II with respect to the Animal Control Officer. However, at the hearing, the Association further amended its petition by withdrawing the Animal Control Officer position from the proposed unit. The Town did not object to this amendment. Because the Animal Control Officer position was removed from the proposed bargaining unit, the hearing was limited to the determination of whether there is a community of interest among the employees in the proposed unit.

² The original petition also listed a Police Captain position. However, this position is currently vacant and the Association did not argue at the hearing that this vacant position should be included in the bargaining unit. Accordingly, the Police Captain position is not addressed in this decision and is not included in the proposed bargaining unit.

unions representing these units for many years. There is no evidence that these bargaining units have interfered with the efficiency of government operations.

4. All employees in the proposed bargaining unit function within the same organizational unit, the Town of Bedford. Their benefits are determined by the Town Council. Their pay raises and promotions are approved by the Town Council.

5 All employees in the proposed unit work in the same geographic location, the Bedford Safety Center.

6. The Fire and Police departments' employees share common areas of the building, including a hallway and a gymnasium. The employees of these two departments frequently interact while working in the building.

7. The same dispatch center services both police and fire departments.

8. All employees in the proposed bargaining unit are middle management employees who supervise other employees in their departments and report to the department heads.³ All employees in the proposed unit are required to have at least an Associate degree or its equivalent.

9. Although day-to-day duties of the employees in the proposed unit may differ, all of them are public safety employees serving to protect the lives and property of the residents of the Town of Bedford.

10. Police Lieutenants are employees of the police department and Fire Captains and Building/Health Code Official are employees of the fire department. See Joint Exhibits 9 & 12. Police department and fire department have different standard operating procedures (SOPs). SOPs are not usually subjects of collective bargaining between unions and employers. The Town did not negotiate its current SOPs with existing police or fire unions.

³As stated above, none of the employees/positions they supervise are in the proposed bargaining unit.

11. The employees in the proposed bargaining unit frequently work side by side at accident scenes, fire and police emergencies, and other incidents threatening the safety of the public, such as car and plane accidents, drownings, active shooter incidents, hazardous materials-related incidents, and overdose incidents.

12. Police department employees worked with the fire department employees at 553 accidents in 2019 and 297 accidents in 2020. Police department employees also assisted the fire department in 448 rescue actions in 2019 and 298 rescue actions in 2020, and also assisted 82 fire scenes in 2019 and 129 fire scenes in 2020. See Union Exhibit 2.

13. Both police department and fire department employees who are active First Responders were eligible to receive a weekly stipend under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. See Union Exhibit 1.

14. Employees of police and fire departments participate in training exercises together, including the 2021 active shooter training under unified command and hazardous materials response training.

15. The employees in the proposed bargaining unit have a strong self-felt community of interest.

16. The terms and conditions of employment of all employees in the proposed bargaining unit are governed by the Town of Bedford Personnel Policies Manual (Manual) established by the Town Council. This Manual covers, among other things, hours of work, reimbursable expenses, overtime, compensatory time, break periods, compensation ranges, wage adjustments, performance appraisals, promotions, transfers, holidays, vacation, sick, and other leaves, medical and dental benefit plans, retirement plan, disability coverage, use of town vehicles, disciplinary process, and grievance procedures. See Joint Exhibit 22. These terms and conditions of employment are common subjects of collective bargaining for unionized

employees and are usually covered by collective bargaining agreements. See e.g. Town Exhibits 2 and 3.

17. All non-unionized police and fire department employees utilize, among others, the same Town evaluation form, expense reimbursement form, and compensatory time accrual form.

18. Common work rules and personnel practices apply to all employees in the proposed bargaining unit. See Joint Exhibit 22.

19. Both police and fire departments' employees are in the same group, Group 2, in the New Hampshire Retirement System.

Decision and Order

Decision Summary

The proposed bargaining unit is approved because the employees in the proposed 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.

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 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). RSA 273-A:8, I provides as follows:

The board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the board should take into consideration the principle of community of interest. 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). “[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. Furthermore, the clear and unambiguous statutory language indicates that satisfaction of just one of the criteria listed in RSA 273-A:8, I (“...*one or more of the following criteria...*”) may be

sufficient to establish a requisite community of interest. See *State Employees' Association of New Hampshire, Inc., SEIU Local 1984 and Rockingham County*, PELRB Decision No. 2019-171.

Furthermore, when determining a community of interest, the focus must necessarily be on similarities, not the differences, between the positions in a proposed bargaining unit. See RSA 273-A:8, I and Pub 302.02 (b). The differences in bargaining unit positions' training requirements or specific job duties do not preclude a formation of a cohesive bargaining unit that is otherwise appropriate under RSA 273-A:8, I and Pub 302.02 (b). For example, although there are differences in training/certification requirements and job descriptions of police and fire department employees, there are numerous public safety, or general municipal, bargaining units containing both police and fire employees. See e.g. *Pittsfield Town Employees, AFT #6214, AFT-NH, AFL-CIO and Town of Pittsfield*, PELRB Decision No. 2017-191 (containing police chief, lieutenants, sergeants, EMS captain, EMS/FF lieutenant, EMTs, paramedics, firefighters, administrative assistant, and public works employees); *Town of Belmont and AFSCME Council 93, Local 3657*, PELRB Decision No. 2011-131 (containing patrolmen, police corporal, firefighters, EMTs, fire lieutenant, secretary); *AFSCME Local 3657, Hollis Police and Fire Employees and Town of Hollis*, PELRB Decision No. 2006-059 (containing employees of police and fire departments); *American Federation of State, County and Municipal Employees, Council 93, Local 3380 and Town of Plymouth*, PELRB Case No. A-0477 (March 13, 1998) (containing employees of police and fire departments); *Gilmanton Town Employees Association and Town of Gilmanton*, PELRB Case No. M-0629 (October 30, 1990) (containing full time and part time police officers, firefighters, EMT, secretaries, and highway dept. employees). See also *City of Lebanon and Teamsters Local 633, Lebanon Professional Administrative Salaried Employees*, PELRB Decision No. 2018-026 (containing deputy fire chief, police lieutenant and captain

among others); *Town of Derry and Professional, Administrative and Technical Employees of Derry, SEIU Local 1984*, PELRB Decision No. 2017-060 (containing among others assistant fire chief and police captain); *Londonderry Administrative Employees Association Affiliated with AFSCME Council 93 and Town of Londonderry*; PELRB Decision No. 2011-321 (containing police captain, lieutenant, fire and police secretaries, fire Marshall, fire captain); *AFSCME Council 93, Local 3657 and Town of Merrimack*, PELRB Decision No. 2010-014 (containing fire deputy chief, captain, lieutenant inspector, police lieutenants, captains, communications supervisor); *Claremont Association of Professional and Management Employees and City of Claremont*, PELRB Case No. M-0541 (December 2, 1981) (containing among others police captain, lieutenant, assistant fire chief).

In the present case, all employees in the proposed bargaining unit function within the same organizational unit, the Town of Bedford. All of these employees are public safety middle management employees who supervise other employees within their respective departments and all of them serve to protect the lives and property of the residents of Bedford. Furthermore, the terms and conditions of employment of all employees in the proposed bargaining unit are governed by the Town Personnel Policies Manual, established by the Town Council, which covers, among other things, hours of work, reimbursable expenses, overtime, compensatory time, break periods, compensation ranges, wage adjustments, performance appraisals, promotions, transfers, holidays, vacation, sick, and other leaves, medical and dental benefit plans, retirement plan, disability coverage, use of town vehicles, disciplinary process, and grievance procedures. These terms and conditions of employment are common subjects of collective bargaining for unionized employees and are usually covered by collective bargaining agreements. Common personnel practices apply to all employees in the bargaining unit. In addition, the employees in the proposed unit work in the same geographic location, the Town Safety Center, frequently

interact with each other at work, including when attending the scenes of incidents and training, and have a strong self-felt community of interest. The fact that the police and fire departments have separate SOPs is of no consequence as SOPs are usually established unilaterally by an employer and not a mandatory subject of collective bargaining. Furthermore, 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. 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.

Based on the foregoing, the following bargaining unit is approved: Police Lieutenant, Fire Captain, and Building/Health Code Official. The Town currently employs three Police Lieutenants, six Fire Captains, and one Building/Health Code Official. Therefore, the proposed bargaining unit contains 10 employees with the same community of interest as required under RSA 273-A:8, I.⁴ 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. "Professional Fire and Police Officers Association of Bedford" 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: 05/03/2022


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⁴ RSA 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."