



**State of New Hampshire**  
Public Employee Labor Relations Board

**AFSCME Council 93**

**and**

**Town of Barnstead**

**Case No. G-0315-1**

**Decision No. 2023-242**

**Appearances:**

Abigail M. Geier, Esq., AFSCME, Boston, MA, for the AFSCME Council 93

Matthew H. Upton, Esq., and Nicholas J. Blei, Esq., Drummond Woodsum & MacMahon. P.A., Manchester, NH, for the Town of Barnstead

**Background:**

On February 21, 2023, the AFSCME Council 93 (Union) filed a petition to certify a bargaining unit comprised of certain employees of the police and fire departments of the Town of Barnstead (Town). The petition for certification is supported by the requisite number of confidential authorization cards. See March 7, 2023 PELRB Report re: Inspection of Confidential Authorization Cards. On March 6, 2023, the Town filed an objection to the petition claiming that the employees in the proposed unit lack a community of interest; that the unit contains both supervisory employees and the employees they supervise in violation of RSA 273-A:8, II (the Town did not specify which employees it claims to be supervisory); and that the Police Secretary/Clerk is a confidential employee withing the meaning of RSA 273-A:1.

The hearing was scheduled for March 24, 2023 and continued twice upon the parties' request. On May 18, 2023, the Town filed an assented to Motion to Restructure seeking leave to

submit the case on stipulated facts, affidavits, and briefs. See PELRB Decision No. 2023-203. The Town's motion was granted, the hearing was cancelled, and the proposed filing schedule was approved. See PELRB Decision No. 2023-098 (May 18, 2023). The filing deadlines were extended twice upon the Union's request.

On June 27, 2023, the Union filed a motion to amend the petition seeking to add a position of Police Lieutenant to the proposed bargaining unit. The Town did not object to this motion. The Union's motion to amend was granted. See PELRB Decision No. 2023-183 (July 20, 2023). The Town did not amend its answer/objection.

The parties submitted a Joint Stipulation of Fact. The Union submitted five affidavits (Fire Lieutenant Timothy Robbins; Police Officer Mytchel Cookingham; Firefighter/EMT Troy Normandin; Police Lieutenant Jason Fiske, and Fire Captain Daniel Conger) and the Town submitted one affidavit (Town Administrator Karen Montgomery). Both parties submitted briefs on July 31, 2023. On August 2, 2023, the Town filed a motion for clarification and admission of exhibits to which the Union objected. The Town's motion for "admission of exhibits" was granted and the parties were given time to file reply briefs. See PELRB Decision No. 2023-203 (August 3, 2023). PELRB Decision No. 2023-203 stated in part as follows:

*Any objections to the exhibits shall be included in the reply briefs. Any issue not addressed in the briefs will be considered abandoned (e.g. supervisory or confidential employee allegations). The record will be closed upon submission of reply briefs. See Admin. Rule Pub 203.06.*

(Emphasis added).

On August 4, 2023, the parties waived their right to submit reply briefs. The parties submitted Joint Exhibit 1 and Town's Exhibits A-H. Joint Exhibit 1 and Town's Exhibits A-H are admitted as full exhibits, the record is now closed, and the decision is as follows.

#### **Findings of Fact**

1. The Town 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 Police Department and Fire Department positions: Police Lieutenant (1 employee), Police Sergeant (1 employee), Police Officer (5 employees), Fire Rescue Captain (2 employees), Fire Rescue Lieutenant (1 employee), Firefighter-Emergency Medical Technician (EMT)(3 employees), and Police Secretary/Clerk (1 employee). Excluded: Fire Chief, Police Chief, Fire Deputy Chief, Police Captain, Administrative Assistant (Fire). At the time this case was submitted for decision, there were 14 employees in the proposed bargaining unit. See Stipulation, at 2 & 3; Union Petition for Certification; and PELRB Decision No. 2023-183.

3. The parties agree that “all of the positions” (including Police Secretary/Clerk) sought for inclusion in the proposed unit perform critical public safety functions for the Town. See Stipulation at 5.

4. Employees of Police and Fire Departments carry out numerous functions of community service and provide emergency assistance to residents and visitors of the Town. See e.g. Robbins, Fiske, Conger, Cookinham, and Normandin Affidavits.

5. The positions of Fire Captain, Fire Lieutenant, Firefighter, Police Sergeant, and Police Officer are “specifically trained, uniformed employees of the Town and are compensated as required by the Town’s Personnel and Policies and Procedures Manual, which includes a single compensation matrix for all Town employees.” See Joint Exhibit 1 (Town’s Personnel Policies and Procedures Manual) & Stipulations at 7.

6. The Fire Department provides, among other public services, fire suppression, rescue, advanced life support, first responder, and ambulance services to citizens of the Town. The fire suppression services include: (1) driving and/or operating pumper fire trucks, tankers, aerial ladders, boats, and other motorized equipment; (2) creating openings in burning buildings

for ventilation and entrance; (3) rescuing persons from burning buildings and wrecked motor vehicles; (4) laying and connecting hose lines and operating nozzles directing water streams; (5) operating portable fire extinguishers; and (6) performing salvage operations at the scene of an incident. They provide rescue services in situations such as vehicle accidents, below grade rescue, building collapse, and water/ice rescue. In a medical emergency, they are responsible for patient care, triage, treatment, and transportation. More specifically, they must assess the extent of a patient's illness or injury, document the patient's vital signs, and accurately record all findings, care, and services. The Fire Department employees provide emergency medical care in accordance with established medical protocols and practices of the appropriate service area hospital or treating physician or health care professional. They are also responsible for recording all information pertaining to burning, fireworks, and oil burner permits. See Stipulation at 8-10.

7. The Fire Department employees do not carry arms in the performance of their duties and do not have arrest authority. They are supervised by Fire Chief and Deputy Fire Chief who report directly to the Board of Selectmen. The Fire Department employees are required to follow not only the Town's policies, but also the Fire Department's rules and regulations. The Fire Chief and Deputy Fire Chief evaluate the Fire Department employees and assist the Board of Selectmen in their hiring, disciplinary, and firing decisions. See Stipulations at 11.

8. The Fire Department operates on a twenty-four (24) hour basis, wherein employees work rotating shifts to ensure constant, around the clock coverage. The Fire Department employees are typically scheduled to work two twenty-four (24) hour shifts (48 hours) per week. They wear Fire Department uniforms and use protective clothing as necessary. See Stipulations at 6 & 12.

9. The Fire Department employees must satisfy the State of New Hampshire firefighter and EMT training requirements per RSA 21-P:29 and RSA 153-A:11. They must also

hold a current Commercial Motor Vehicle Operators license with tank and air brake endorsement issued by the State. They are required to participate in drills and training courses involving "firefighting theory and practices" and "emergency medical updates." See Stipulation at 13.

10. The Police Department employees are engaged in law enforcement, including performing patrol, arrest, and prosecutorial functions, among others. Police Officers and Police Sergeant are responsible for patrol, investigations, traffic control, and a variety of other duties designed to preserve peace and order. They wear Police Department uniforms. Police Officers must also carry out numerous functions of community service and emergency assistance to the residents and visitors of the Town. See Stipulations at 14 & 15.

11. Police Officers' and Sergeant's responsibilities include the following:

- Direct activities at accident and disaster scenes and restore traffic to normal;
- Investigate traffic accidents to determine cause;
- Stop motor vehicles where appropriate;
- Detect and apprehend DWI offenders;
- Arrest persons based upon probable cause;
- Investigate crimes and/or suspected criminal acts to identify, locate, [a]pprehend, and prepare for prosecution those persons charged with committing crimes;
- ... Utiliz[e] specialized skills and equipment for the purpose of developing, collecting, and processing legal supporting evidence and information relating to criminal activities, examines [sic] crime scenes, collects [sic] physical evidence, interviews [sic] witnesses and suspects;
- Assess the extent of criminal activity and the need for further police assistance.

See Stipulations at 15.

12. The Police Sergeant performs all of the duties as the Police Officers. Additionally, the Police Sergeant performs the following duties: (1) reviews call reports; (2) performs background checks; (3) maintains the evidence locker; (4) reviews the Police Officers' investigative and call reports; (5) handles prosecutions; and (6) follows up on felony investigations. See Stipulations at 16.

13. The Police Department employees are supervised by the Police Chief who reports directly to the Board of Selectmen. The Police Department employees are required to follow not only the Town's policies, but also the Police Department's Standard Operating Procedures (SOPs). The Police Chief evaluates the Police Department employees and assists the Board of Selectmen in their hiring, disciplinary, and firing decisions concerning Police Department employees. See Stipulations at 17.

14. The Police Department employees are typically scheduled to work four ten (10) hour workdays (40 hours) per week. They are assigned to one of two shifts 7 a.m. – 5 p.m. or 5 p.m. - 3 a.m. and rotate between the two shifts approximately every three months. Between 3 a.m. and 7 a.m. employees are on-call. See Stipulations at 18.

15. The Police Department employees must satisfy the State of New Hampshire police training requirements. See RSA 188-F:27. They are also required to pass a fingerprint check, a character and background check, a medical and psychological exams, and a polygraph exam; and to have a record free of felony conviction in any state or country (which has not been pardoned or annulled), of multiple misdemeanor convictions so as to indicate a disregard for the law, and of misdemeanor conviction which has not been pardoned or annulled and which is serious enough to cast doubt on his/her fitness to be a police employee. See Stipulations at 19.

16. The Police Secretary/Clerk is responsible for maintaining files, tracking employee leave status, and assisting with daily business functions of the Police Department; and may assist the Police Chief with preparation of weekly payroll. See Stipulation at 20. The examples of Police Secretary/Clerk's duties include, among others, the following: providing first point of contact with the public on the telephone and in the lobby, maintaining department files, data

entry, processing fingerprints for applicants, and assisting with preparation of firearms permits and court files. See Town Exhibit D.

17. *All employees* in the proposed unit are required to undergo specialized training, either in their law enforcement, fire suppression, or emergency rescue. See Stipulation at 21 (emphasis added).

18. Police and Fire personnel regularly and routinely interact when performing their critical duties at accidents or fire scenes and during other critical incidents. See Stipulation at 22. Employees of both police and fire departments respond to calls dispatched for emergency medical services. It is common for both police and fire personnel to respond to all emergency calls. Cookinham, Normandin, Conger, Fiske, & Robbins Affidavits.

19. Police Department responds to both Police and Fire calls dispatched. Police Chief has instructed Police Department employees to respond to every medical call, including medical calls from Fire dispatch. See Fiske, Conger, & Cookinham Affidavits.

20. Police Officers often serve as “extension” of the Fire Department while on the scene of an emergency. If the Fire Department calls for a helicopter at the scene of an emergency, the Police Department employees are on the scene to secure the area. Police Officers may assist with administering cardiopulmonary resuscitation (CPR) at the scene of emergency and help carry equipment for Fire Department personnel. For calls dispatched as “psychological/mental health,” police and fire departments communicate with each other over the radio to ensure Police Officers secure the scene before the Fire Department employees arrive. See e.g. Conger Affidavit.

21. Employees of both Police and Fire Departments are required to work at the Town-sponsored events, such as the annual Memorial Day Parade and their duties and responsibilities during these events are similar. Conger Affidavit.

22. Employees of both Police and Fire Departments attended a “breaking and entering” training and a “wound packing” training. Some Fire Department employees are also invited to attend an active shooter training for public safety personnel. Employees of both departments have basic skills to treat wounds and are “expected to act accordingly when responding to emergency medical services calls.” See e.g. Conger & Robbins Affidavits.

23. The Town’s Personnel Policies and Procedures Manual (Manual) is applicable to all Town employees including all employees in the proposed unit. It sets forth uniform fringe benefits for all Town employees, including employees in the Fire and Police Departments. See Stipulations at 23 & 24, and Joint Exhibit 1.

24. The Manual covers, among other things, compensation, hours of work, reimbursable expenses, overtime, compensatory time, break periods, holidays, vacation, sick, and other leaves, medical and dental benefit plans, disability coverage, personal dress, personnel records, discipline procedure, promotions, transfers, performance appraisals, and dispute resolution procedure. See Joint Exhibit 1. These terms and conditions of employment are common subjects of collective bargaining for unionized employees and are usually covered by collective bargaining agreements.<sup>1</sup>

25. All employees in the proposed bargaining unit work within the same jurisdiction, the Town of Barnstead. Their wages, pay raises, and benefits are determined by the Town Board of Selectmen and they are subjects to the same personnel policies, including hiring, firing, discipline, and dispute resolution, established in the Manual by the Board of Selectmen. See e.g. Stipulation at 26 & Joint Exhibit 1.

26. Although day-to-day duties of the employees in the proposed unit may differ, all

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<sup>1</sup> Collective bargaining agreements are on file with the PELRB pursuant to RSA 273-A:16, I and available to the public on the PELRB website at <https://www.nh.gov/pelrb/collective/index.htm>.



of them are public safety employees serving to protect the lives and property of the residents of the Town of Barnstead.

27. Common work rules and personnel practices apply to all employees in the proposed bargaining unit. See Joint Exhibit 1.

28. Although the Police and Fire Departments have different mailing addresses because the buildings face different roads, the buildings abut each other and one of the entrances to the police station goes through the Center Fire Station parking lot. All employees in the proposed unit work in virtually the same geographic location, in two adjacent buildings in Center Barnstead. The Parade Fire Station is no longer used as an active Fire Station. See e.g. Conger, Robbins, Cookinham, & Normandin Affidavits.

29. Police Department and Fire Department have different SOPs. SOPs are not usually subjects of collective bargaining between unions and employers.

30. The positions of Firefighter Captain, Firefighter Lieutenant, and Police Sergeant do not have the authority to evaluate employees in the proposed unit, do not impose discipline on subordinate officers, do not recommend discipline to their superior officer, do not have authority to grant time off, and do not make scheduling assignments. See Stipulations at 25.

31. The Police Lieutenant does not have the authority to evaluate employees, impose or recommend discipline, approve leave requests, or make scheduling assignments. See Fiske Affidavit and Stipulation at 17.

32. With respect to employees in the Fire and Police Departments, the Town's Board of Selectmen has final authority for hiring and firing decisions and compensation increases. See Stipulation at 26.

33. The employees in the proposed bargaining unit have a self-felt community of interest. See e.g. Conger, Robbins, Fiske, Cookinham, & Normandin Affidavits.

## 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. Despite claiming in its objection that the proposed bargaining unit contains both statutory supervisory and confidential employees, the Town abandoned these claims because it did not brief or submit sufficient evidence to address these claims. The only issue in this case, therefore, is whether the employees in the proposed bargaining unit share a community of interest.

“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.

Admin. R. 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 (emphasis added). 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.

In addition, the community of interest criteria reflect that “determination of appropriate bargaining units is not a search for uniformity in job descriptions ... [and] accommodate a fair

degree of position diversity..." *UNH Law Faculty Union & University System of New Hampshire*, PELRB Decision No. 2015-027 (February 18, 2015), affirmed, *Appeal of University System of New Hampshire*, New Hampshire Supreme Court, non-precedential order, Case Nos. 2015-0434 and 2015-0516 (June 22, 2016). 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). See *Professional Fire and Police Officers Association of Bedford and Town of Bedford*, PELRB Decision No. 2022-155 (September 28, 2022). See also *State Employees' Association of NH, Inc., SEIU Local 1984 and Plymouth State University*, PELRB Decision No. 2020-107 (May 21, 2020).

The Town, including Town Administrator Karen Montgomery in her Affidavit, focuses on the differences in job duties, SOPs, and training of Fire Department and Police Department employees. Upon thorough review of the Town's and Union's evidence, including Montgomery Affidavit, I find the Town's arguments unpersuasive and insufficient to outweigh the evidence that proves the existence of a community of interest in this case, such that it is reasonable for the employees in the proposed unit to negotiate jointly. 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). See *Professional Fire and Police Officers Association of Bedford and Town of Bedford*, supra, PELRB Decision No. 2022-155. See also *State Employees' Association of NH, Inc., SEIU Local 1984 and Plymouth State University*, supra, PELRB Decision No. 2020-107. For example, there are numerous examples of public safety, as well as general municipal, bargaining units containing police, fire, and clerical employees with diverse training/certifications and job duties, that have been bargaining collectively over a number of years which resulted in numerous successive agreements on terms and conditions of employment. See e.g. *Pittsfield Town Employees, AFT*

#6214, *AFT-NH, AFL-CIO and Town of Pittsfield*, PELRB Decision No. 2017-191 (approving unit 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 (approving unit containing patrolmen, police corporal, firefighters, EMTs, fire lieutenant, secretary); *Londonderry Administrative Employees Association (Public Safety), Affiliated with AFSCME Council 93 and Town of Londonderry*; PELRB Decision Nos. 2011-321 & 2021-147 (containing police captain, lieutenant, fire and police secretaries, fire Marshall, fire captain among others); *AFSCME Local 3657, Hollis Police and Fire Employees and Town of Hollis*, PELRB Decision No. 2006-059 (approving unit 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) (approving unit containing employees of police and fire departments, including secretary); *Londonderry Executive Employee Association & Town of Londonderry*, PELRB Decision Nos. 2001-118 & 2004-086 (approving unit containing of police chief and fire chief among others); *AFSCME Council 93, Local 3657 and Town of Merrimack*, PELRB Decision Nos. 2010-014 & 1994-48 (containing among others police lieutenants, police captains, fire deputy chief, fire captain, communications supervisor, and administrative officer).<sup>2</sup>

In this case, all employees in the proposed bargaining work within the same jurisdiction, the Town of Barnstead, and are subject to the hiring, firing & disciplinary decisions by the same Board of Selectmen, that also establishes their wages, pay raises, and benefits. All of these employees are public safety employees and all of them serve to protect the lives and property of the residents of Barnstead. Furthermore, the terms and conditions of employment of all

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<sup>2</sup>See footnote 1 above.

employees in the proposed bargaining unit are governed by the Manual, established by the Town Board of Selectmen, which covers, among other things, compensation, hours of work, reimbursable expenses, overtime, compensatory time, break periods, holidays, vacation, sick, and other leaves, medical and dental benefit plans, disability coverage, personal dress, personnel records, discipline procedure, promotions, transfers, performance appraisals, and dispute resolution procedure. Hence, these employees have the same conditions of employment. See 273-A:8, I (a). 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 and salary and fringe benefit structures, set for in the Manual, apply to all employees in the proposed unit. See Admin. R. Pub 302.02 (b)(2). In addition, the employees in the proposed unit work in virtually the same geographic location (Admin. R. Pub 302.02 (b)(1)), frequently interact with each other at work, including when attending the scenes of incidents and training, and have a self-felt community of interest (See Admin. R. Pub 302.02 (b)(3)). 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. Based on the foregoing, I find that 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. See *Appeal of Town of Newport*, supra, 140 N.H. 343 at 352.

Furthermore, the Town's reliance on *Appeal of Town of Newport*, supra, 140 N.H. 343 to support its assertion of lack of a community of interest is misplaced. In *Newport*, the PELRB's decision as to the community of interest was reversed because the PELRB's findings, unlike here, did not provide "a sufficient basis upon which to conclude" that the fire lieutenants had a

community of interest “in their working conditions” with the public works employees. See *id.* at 354. Specifically, the PELRB included fire lieutenants in the unit based solely on the findings that: (1) fire lieutenants were “full time line employees of the fire department, who function as house men and lead employees on each of four rotating shifts,” (2) fire lieutenants had “no supervisees who are public employees,” and (3) “all employees of the town have a self-felt community of interest, all work and are paid by the same employer...” See *id.* (Internal quotation marks omitted.) Moreover, in *Newport*, the fire lieutenants had worked under a fire department collective bargaining agreement for at least six years prior to the petition and were operating under the status quo at the time of the hearing. *Id.* Therefore, they were operating under the terms and conditions of employment different from those applicable to the rest of the unit. See *id.* As discussed above, unlike fire lieutenants in *Newport*, the Fire and Police employees in this case, among other things, operate under the same terms and conditions of employment, regularly interact with each other, have the same salary and fringe benefits structures and personnel practices, and work in the same geographic location.

The Town’s reliance on *Barnstead Police & Fire Employees v. Town of Barnstead*, PELRB Decision No. 2006-227 (December 18, 2006) is likewise misplaced. As stated by the PELRB in *Professional Fire and Police Officers Association of Bedford and Town of Bedford*, PELRB Decision No. 2022-155, the 2006 Barnstead decision was

a hearing officer decision that was not subject to review by the PELRB under Pub 205.01. As such, *Barnstead* does not have the precedential value claimed by the Town. See, e.g. *Appeal of Hillsborough County Nursing Home*, 166 N.H. 731, 736 (2014).

See *id.* Moreover, the Town otherwise misapprehends *Barnstead* and overstates its relevance.

See *id.* In 2006 decision,

The *Barnstead* hearing officer did not dismiss the petition to form the proposed bargaining unit because municipal police and fire employees cannot, as a matter of

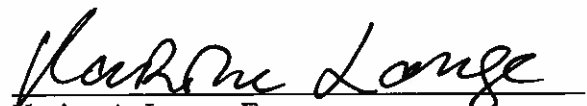
law, have a sufficient community of interest; the hearing officer dismissed the petition because of the union's failure to present adequate evidence on community of interest.

See PELRB Decision 2022-105 at 4 (order on Town's Motion for Review of Hearing Officer Decision No. 2022-068). *Barnstead* resolved the petition in that specific case, not the issue of community of interest in all subsequent petitions involving police and fire employees. See *Professional Fire and Police Officers Association of Bedford and Town of Bedford*, supra, PELRB Decision No. 2022-155.

Based on the foregoing, the following bargaining unit is approved: Police Lieutenant, Police Sergeant, Police Officer, Fire Rescue Captain, Fire Rescue Lieutenant, Firefighter-EMT, and Police Secretary/Clerk. Excluded: Fire Chief, Police Chief, Fire Deputy Chief, Police Captain, Administrative Assistant (Fire). The proposed bargaining unit contains 14 employees with the same community of interest as required under RSA 273-A:8, I.<sup>3</sup> 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. "AFSCME Council 93" 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: 09/18/2023

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

Distribution: Abigail M. Geier, Esq.  
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<sup>3</sup> 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."