State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, Inc. Local 50	*	
Petitioner	*	
and	*	Case No: P-0787
State of New Hampshire, Department of Safety, DMV	*	
Respondent	*	Decision No. 2006-169
New England Police Benevolent Association, Inc. Local 55	*	
Petitioner	*	
and	*	Case No: P-0788
State of New Hampshire, Department of Safety, DMV	*	
Respondent	*	

APPEARANCES

Representing New England Police Benevolent Association, Inc. Local 50 and 55

Peter J. Perroni, Esq.

Representing State of New Hampshire, Department of Safety, Division of Motor Vehicles

Sheri Kelloway, Esq.

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

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BACKGROUND

The New England Police Benevolent Association, Inc. ("NEPBA") filed two certification petitions on July 31, 2006. Case No. P-0787 seeks to certify a unit composed of 63 patrol officers and 3 corporals (the "Patrol Officers' Unit"). Case No. P-0788 seeks to certify a unit composed of 9 Sergeants, 3 Lieutenants, 1 Captain, and 1 Executive Major (the "Supervisors' Unit"). Both certification petitions identify the State of New Hampshire, Department of Safety, DMV as the Public Employer. Virginia Beecher signed the certification of the Public Employer's agreement

with the composition of the unit on behalf of the State of New Hampshire, Department of Safety, DMV on both petitions. On August 18, 2006 NEPBA filed motions to amend the petition in both cases. NEPBA seeks, among other things, to amend each original petition by adding a petition to modify pursuant to PUB 302.05. NEPBA proposes to modify the existing bargaining unit described in PELRB decision 2002-058 by creating two new bargaining units, one consisting of the positions in the proposed Patrol Officers' Unit and the other consisting of the positions in the proposed Supervisory Officers' Unit. The PELRB granted the motion to amend on September 6, 2006 (Decision No. 2006-138).

On August 8, 2006 the State Employees' Association, SEIU Local 1984, AFL-CIO, CLC (the "SEA"), filed exceptions to the two certification petitions. Among other things, SEA contends that the employees involved in the two petitions are currently covered by existing SEA certifications, that NEPBA cannot serve as the exclusive representative for both units (a claim subsequently withdrawn by the SEA), that the proposed Supervisors' Unit contains non-supervisory employees, that no agreement has been reached for unit composition because the Department of Safety, Division of Motor Vehicles is not the employer of record for the involved employees, and that the SEA has information that Ms. Beecher in fact did not reach agreement with the bargaining unit in question.

On August 9, 2006 the SEA filed a Supplemental Objection and Exceptions. In this filing, among other things, the SEA challenges the PELRB' s authority to conduct an election or pre-election conference in regard to the two petitions pursuant to the provisions of RSA 273-A: 10. The SEA also claims that the petitions fail to recognize that the involved employees are part of an existing unit represented by the SEA. The SEA asks the PELRB to investigate the petitions and hold hearings. The SEA also claims the petitions fail to identify the exclusive representative presently representing the bargaining unit contrary to applicable rules, the SEA has not been treated as a party to the two cases and has not received proper notice, the petitions are misleading as to whether the employer has agreed to the proposed unit and proposed exclusive representative, and the employer in this case is the Governor. Finally, the SEA claims the PELRB is acting with unusual and undue speed. The SEA seeks a dismissal of the petitions or a hearing prior to the conduct of any election or pre-election conference.

Initially the PELRB scheduled a pre-election conference for August 9, 2006. Upon receipt of the SEA filings, the PELRB cancelled the pre-election conference and issued a notice scheduling a pre-hearing conference for August 24, 2006 and a hearing for September 14, 2006.

An informal pre-hearing conference was held on August 24, 2006 (SEA's Motion to Continue the August 24, 2006 informal pre-hearing conference was denied, Decision No. 2006-128 and the SEA's Appeal of this Hearing Officer decision to the PELRB Board was denied by the Board on August 31, 2006, Decision No. 2006-132). A pre-hearing conference memorandum and order concerning the August 24, 2006 conference issued on August 30, 2006, Decision No. 2006-133, and a further informal pre-hearing conference was set for September 14, 2006 and a hearing on the merits for September 20, 2006 and if necessary continuing on September 21, 2006. On September 7, 2006 the PELRB denied the SEA's Motion to Consolidate (Decision No. 2006-139), and the SEA's Motion to Add the State of New Hampshire by the Governor's Office as a Necessary and Indispensable Party (Decision No. 2006-140). The PELRB conducted a second informal pre-hearing conference on September 14, 2006 at the PELRB offices in

Concord, New Hampshire.

A hearing on the NEPBA petitions was conducted on September 20, 2006. The PELRB has received the parties' briefs and issues the following order.

FINDINGS OF FACT

1. The State of New Hampshire, Department of Safety, Division of Motor Vehicles ("DMV") is a public employer within the meaning of RSA 273-A: 1,x.

2. The State Employees' Association, SEIU Local 1984, AFL-CIO, CLC ("SEA") is an employee organization that represents employees of the DMV for purposes of collective bargaining pursuant to RSA 273-A. The SEA is the certified bargaining agent for DMV employees in the bargaining unit pursuant to the Certification of Representative and Order to Negotiate dated May 16,2002, Decision No. 2002-058.

3. The May 16, 2002 Certification (Decision No. 2002-058)(Petitioner Exhibit 15) issued following a contested hearing on the SEA's Modification Petition filed December 10, 2001. Decision No. 2002-045.

4. There was no evidence that the May 16, 2002 Certification was negotiated.

5. New England Police Benevolent Association, Inc. is an employee organization within the meaning of RSA 273-A.

6. On January 23, 1990 the SEA filed a modification petition which ultimately resulted in the separation of all sworn state police personnel from a larger bargaining unit consisting of employees in the Department of Safety. Case No. P-0713:2, Decision No. 90-69 and 90-109.

7. The SEA identified the Division of State Police, Department of Safety, State of New Hampshire as the public employer in the January 23, 1990 modification petition it filed in Case No. P-0713:2.

8. The SEA did not identify the "State of New Hampshire, by and through the Governor's Office" as the public employer in Case No. P-0713:2, nor did it claim or assert that the "State of New Hampshire, by and through the Governor's Office" was a necessary and/or indispensable party in that case.

9. The Department of Safety is an agency within the meaning of RSA 273-A:1,x.

10. Pursuant to Joint Exhibit 2 (the 2005-2007 Collective Bargaining Agreement) the Department of Safety, State of New Hampshire is the "Employer" as stated in the preamble appearing at page 3.

11. Virginia Beecher is the Director of the Division of Motor Vehicles, Department of Safety.

12. Director Beecher works with and under the direction of Commissioner Flynn of the Department of Safety as well as Assistant Commissioner Sweeney of the Department of Safety.

13. Director Beecher is responsible for the Bureau of Highway Patrol, which primarily consists of the employees who are the subject of the present NEPBA petitions, and which is based at Hazen Drive in Concord, New Hampshire.

14. Director Beecher signed the NEPBA petitions on behalf of the State of New Hampshire, Department of Safety, Division of Motor Vehicles and clearly indicated that the employer agreed to the proposed composition of the two units at issue in these cases.

15. At hearing Director Beecher testified that she was 100%. in agreement with the proposed composition of the units.

16. Subsequent to Director Beecher's execution of the agreement to composition component of the two petitions she attended a meeting with Commissioner Flynn, Assistant Commissioner Sweeney, and representatives of the SEA, including Lori Hayes, Gary Smith, and Jay Ward.

17. It appears this meeting was called because of the SEA's objections to Director Beecher's agreement to the proposed units.

18. At this meeting Director Beecher explained that she had signed the two petitions to provide her approval of the proposed units and both Commissioner Flynn and Assistant Commissioner Sweeney stated they would have done the same thing.

19. Director Beecher did not have any dealings with the Governor's office regarding the NEPBA petitions.

20. Petitioner's Exhibit 9 is the organizational chart for the New Hampshire Department of Safety, Division of Motor Vehicles, Bureau of Highway Patrol.

21. The employees at issue in the two NEPBA petitions are organized in the nature of a para-military organization with a very specific rank and chain of command structure.

22. The involved employees are sworn law enforcement officers within the Bureau of Highway Patrol who wear distinct uniforms which are quasi military in appearance, and the employees who appeared to testify conducted and presented themselves in a serious and thoughtful manner with an obvious feeling of a community of interest and a shared mission that distinguishes them from other Department of Safety Employees.

23. The involved employees are required to carry firearms and maintain appropriate firearm licensures and certifications and participate in training (for example, a New

Hampshire State Police Academy Certification is required, employees are required to maintain and update their training on the use of force and domestic violence law) and ongoing certifications that are unique and specific to these employees as compared to the general employee population of the Department of Safety.

24. The Highway Patrol Officers are the only law enforcement officers in New Hampshire charged with maintaining and enforcing the Federal Motor Carrier Law and they are the only Bureau whose officers are required to wear pagers at all times for possible call out with the exception of scheduled and pre-approved leave.

25. The genesis of the current Bureau of Highway Patrol and Enforcement is RSA 266:1-a, effective July 17, 2002. RSA 266:1-a effectively replaced "motor vehicle inspectors" with "highway patrol and enforcement officers" – the motor vehicle inspectors were a group of approximately 6 motor vehicle officers in 1999, later known as the Motor Vehicle Inspection Unit in 2001 with approximately a dozen officers, and the size of the force grew to approximately 25 officers when the Bureau of Highway Patrol and Enforcement was established within the Division of Motor Vehicles.

26. By 2004 there were approximately 55-60 officers in the Bureau of Highway Patrol and today there are approximately 80 officers.

27. As the number of officers in the Bureau of Highway Patrol grew, the command structure changed and has become more sophisticated and has continued to evolve over time, including over the last several years – for example, Petitioner Exhibit 9 is the current organizational chart, which has a July 1, 2006 date at the bottom and which Executive Major Perreault testified that became effective after March, 2006 (plainly there was a period of time preceding its implementation when the final changes were conceived, discussed, and refined), and Petitioner Exhibit 9 (which contains two new units) replaced the organizational chart which appears as the second page of Petitioner Exhibit 8.

28. Petitioner's Exhibit 8 contains the Standard Operating Procedures for the Bureau of Highway Patrol.

29. Petitioner Exhibits 1-7 set forth general and specific information about the Highway Patrol employee positions involved in this case.

30. The SEA seeks to exclude the employees in the position of Highway Patrol and Enforcement Sergeant from the proposed supervisor's unit.

31. Petitioner Exhibit 4 contains written information about the duties and responsibilities of the Highway Patrol and Enforcement Sergeant, including the fact this Sergeant position.

32. Pursuant to Petitioner Exhibit 4, the Sergeant position plans, assigns, and supervises

troop/unit activities as directed by a superior officer, including evaluating work performance of subordinate officers as required.

33. Pursuant to Petitioner Exhibit 4, the Sergeant position supervises traffic patrol or investigation work at troop/unit level and ensures compliance of personnel with the laws and regulations governing the Division of State Police.

34. Pursuant to Petitioner Exhibit 4, the Sergeant position supervises the appearance, discipline, and efficiency of subordinate personnel.

35. Pursuant to Petitioner Exhibit 4, the Sergeant position requires direct supervision of programs or of employees doing work which differs from the supervisor, including disciplining employees, solving personnel problems, recommended hiring and firing employees, and developing work methods.

36. Pursuant to Petitioner Exhibit 4, the Sergeant position manages a working unit or section with responsibility for employee performance appraisal.

37. Pursuant to Petitioner Exhibit 4, the Sergeant position oversees and trains subordinate officers in all aspects of motor vehicle and criminal laws.

38. Pursuant to Petitioner Exhibit 4, the Sergeant position exercises general supervisory duties in the office and field units as delegated by the command staff.

39. Pursuant to Petitioner Exhibit 4, the Sergeant position assists with the discipline process, recommending discipline to the Lieutenants, Captain or Executive Major when necessary and ensures policy, procedures and practices are followed as written.

40. Pursuant to Petitioner Exhibit 4, the Sergeant position prepares reports concerning reviews and work performance of subordinate personnel to ensure compliance with Division performance standards.

41. Pursuant to Petitioner Exhibit 4, the Sergeant position utilizes knowledge of rules, regulations, procedures and laws as a means of providing direction to subordinate staff in the discharge of their responsibilities.

42. Petitioner Exhibit 17 is a summary concerning performance evaluations and it lists the employees evaluated as well as the identity of the evaluator - the summary is taken from a batch of annual performance summaries from 2005 and 2006 which were confidentially filed with the hearing officer for the limited purpose of confirming the accuracy of Petitioner Exhibit 17.

43. The evaluators shown on Petitioner Exhibit 17 correspond with the performance summary forms with the exception of the Douglas Wood/Sergeant Armaganian entry at the end of Petitioner Exhibit 17 - there is no corresponding summary form for this entry so it is disregarded.

44. Petitioner Exhibit 17 demonstrates that in fact Sergeants are extensively involved in the employee evaluation process and it also shows that Corporals are not involved at all at this level, and this is also consistent with the testimony provided at the hearing.

45. The PELRB also received testimony which establishes that although they do not necessarily have final authority (that rests with the Commissioner of the Department of Safety), Sergeants are involved and engaged in and with employee discipline, scheduling, and supervision of Corporals and Officers I and II, consistent with the descriptions in Petitioner Exhibit 4.

46. Director Beecher relies on input from Sergeants concerning the evaluation process as from her point of view no one would know better than the Sergeants how the Officers below them are performing - likewise, Director Beecher relies on the Sergeants with respect to internal affairs investigations.

47. Sergeants issue oral and written reprimands to Officers and when necessary will involve officers higher in the chain of command in a particular disciplinary matter but typically at the end of the chain of command review the Sergeant presents the disciplinary outcome to the involved officer and will in the process sign any formal letters of reprimand (along with others higher in the chain of command).

48. Sergeants are also involved in the processing and handling of grievances, as they hear and attempt to resolve grievances at the first level.

49. Sergeants also conduct internal affairs investigations at the Bureau of Highway Patrol and with respect to other DMV employees as well.

50. There is a clear distinction and separation between the duties of Sergeants and Corporals – for example, Corporals do not have the same supervisory authority as Sergeants, Sergeants assign Corporals to locations, Corporals do not have the disciplinary authority held by Sergeants, and Sergeants fill in for Lieutenants, but Corporals never fill in for Sergeants.

51. Officers, Corporals, and Sergeants work in five distinct units, Petitioner Exhibit 9. As recounted by Executive Major Perreault, Sergeants are in charge of two of the units (Special Investigations and Drivers Licensing) and Lieutenants are in charge of the other three units.

52. The Sergeants are front line supervisors and it is their responsibility to assign and monitor work as well as coach and mentor the employees for which they are responsible.

53. Sergeants are sent to Frontline Supervision School, where they receive specialized

supervisory training (Corporals are do not receive this training).

54. In the Motor Carrier Enforcement Unit (Petitioner Exhibit 9), and as described by Sergeant Armaganian, Sergeants establish the time frame to conduct safety audits, decide who gets the assignments, the result of the safety audits are reported back to the Sergeant, and the Sergeant decides whether to accept or reject the reviews. Sergeants also coordinate with each other to compile the overall schedule

DECISION AND ORDER

Jurisdiction

The PELRB has jurisdiction over certification and modification petitions involving public employers, public employees, and employee organizations pursuant to the general provisions of RSA 273-A and the specific provisions of Pub 301.01, 301.03(c), and 302.05.

Discussion

The SEA has raised a number of objections not only to the NEPBA filings in this case but also to the PELRB processing of these cases. A number of decisions have already issued in this case as noted. This decision is intended to address the remaining issues.

At the outset it is noted that NEPBA has filed pleadings which properly put the issues involved before the PELRB. The SEA's complaint about the form of the NEPBA filings unnecessarily elevates form over substance as the NEPBA filings clearly articulate the claims made, the type of proceeding involved, and the relief sought. The SEA's complaint about the form of the NEPBA filings also overlooks the fact that the original NEPBA filings did utilize a PELRB form and that both Pub 301.01(d) and 302.05 (c) (PELRB rules which specifically address certification and modification petitions) state that a petitioner "may" use PELRB forms.

The SEA's argument that a decertification petition is required in this case is incorrect. Pub 301.03 (c) requires the filing of a "petition for certification" under Pub 301.01 when the involved employees seek to replace an incumbent representative with a new certified bargaining agent, as is the case here. The SEA's related argument that NEPBA cannot meet the requisite 30% showing of interest required under Pub 301.01 (f) also lacks merit. NEPBA does not seek to replace the SEA as the exclusive representative of the larger bargaining unit in which the involved officers of the Bureau of Highway Patrol and Enforcement are currently located. Instead, NEPBA seeks a modification in order to create two new bargaining units – in the event the two new units are created, an election must be conducted in order to establish the identity, if any, of the exclusive bargaining agent for the two new units. Pub 301.01 requires a 30% interest showing among the employees in the two proposed new bargaining units, and not among the employees in the larger bargaining unit to which the involved officers belonged at the time these petitions were filed. In this regard, it is noted that the SEA does not claim that the creation of these proposed two new units would improperly fragment the existing, larger bargaining unit.

The SEA's complaints that it has not been treated as a party and has not received notice are belied by SEA's extensive involvement in these matters from the outset and the information

presented on the NEPBA filings. The NEPBA filings in fact identified the SEA as the incumbent representative. The SEA was notified of the NEPBA filings and began submitting pleadings on August 8, 2006. The SEA was notified of PELRB informal pre-hearing conferences and hearings, and the SEA participated as a party in all informal pre-hearing conferences and at the September 20, 2006 hearing, where SEA sat at counsel table and fully participated in the proceedings.

The SEA has also argued about the identity of the public employer in this case. In part this issue was addressed in a prior decision in this case concerning the SEA's Motion asking the PELRB to order that the State of New Hampshire through the Governor's Office (the "Governor's Office") appear in this case as a necessary and indispensable party prior to the conduct of any further proceedings. In the alternative, the SEA requested that the PELRB dismiss these proceedings for failure to name a necessary and indispensable party.

In Decision No. 2006-142 the PELRB reserved the question as to whether the public employer's active participation in this case is necessary or whether the public employer as identified by NEPBA in its petitions qualifies as a proper public employer within the meaning of RSA 273-A:1, X. With respect to this question, the PELRB notes that the Governor's office does not believe that its statutory obligations include a requirement that it separately and formally participate as "The State of New Hampshire through the Governor's Office" in certification or modification proceedings, notwithstanding the SEA's arguments to the contrary. Attorney Michael Brown of the attorney general's office filed a special appearance in these consolidated cases for the limited purpose of opposing the SEA's request to have the Governor's office formally involved in those proceedings. It is also noted that Attorney Kelloway appeared and is represented the Department of Safety, Division of Motor Vehicles throughout these proceedings.

The PELRB also finds that the NEPBA filings properly identify the public employer as the State of New Hampshire, Department of Safety, Division of Motor Vehicles for the purposes of these proceedings. The petition named the State of New Hampshire, Department of Safety, Division of Motor Vehicles as the employer. Under RSA 273-A:1, X a state agency such as the Department of Safety qualifies as a public employer. The preamble of the parties' collective bargaining agreement specifically identifies the "Department of Safety, State of New Hampshire" as the employer. Joint Exhibit 2.

The SEA's contentions in this case concerning the identity of the public employer are also inconsistent with pleadings the SEA has filed in other cases with the PERLB, including unfair labor practice complaints (Petitioner's Exhibits 10-14) and a similar modification proceeding commenced by the SEA on January 23, 1990. In that case the SEA filed a modification petition which ultimately resulted in the separation of all sworn state police personnel from a larger bargaining unit consisting of employees in the Department of Safety. Case No. P-0713:2, Decision No. 90-69 and 90-109, and ultimately resulted in the October 18, 1990 certification of the New Hampshire Troopers Association as the representative of the involved employees (Case No. P-0754)(the SEA was on the ballot as well but not elected). The SEA identified the Division of State Police, Department of Safety, State of New Hampshire as the public employer in the January 23, 1990 modification petition it filed in Case No. P-0713:2. Notably the SEA did not identify the "State of New Hampshire, by and through the Governor's Office" as the public employer in Case No. P-0713:2, nor did it claim or assert that the "State of

New Hampshire, by and through the Governor's Office" was a necessary and/or indispensable party in that case.

Further, neither RSA 273-A:3 nor 273-A:9 require the addition of the State of New Hampshire through the Governor's Office as a party in the case as argued by the SEA. RSA 273-A:3 doesn't address the question. RSA 273-A:9 only requires that the state, represented by the governor's office, negotiate all cost items and terms and conditions of employment (i.e. the contents of the parties' collective bargaining agreement). It does not require that governor's office be specifically named and included as a party in decertification proceedings. In fact, as noted, the very agreement the governor's office is to negotiate under RSA 273-A:9 specifically identifies the employer as the "Department of Safety, State of New Hampshire."

SEA's reliance on PELRB Decision 2002-129 is misplaced (the SEA has raised this decision to support virtually identical motions filed in other cases). In that case the Commissioner of Employment Security as petitioner filed a request for declaratory ruling per Pub 206. One issue was whether the commissioner was a public employer or employee under the provisions of RSA 273-A (and hence had standing to bring a petition for declaratory ruling under Pub 206). The PELRB ruled that the State of New Hampshire was the employer. The PELRB did not rule that the employer is the State of New Hampshire Through the Governor's Office as the SEA urges in this case, and the PELRB did not address whether the State of New Hampshire, Department of Safety, Division of Motor Vehicles (or any other department) is a public employer for purposes of a certification or modification proceeding. In the instant case the petitioners are not claiming that the Commissioner of the Department of Safety is the public employer – they claim the employer is the State of New Hampshire, Department of Safety, Division of Motor Vehicles. This claim is consistent with PELRB Decision 2002-129 and the authorities and facts discussed, the collective bargaining agreement, RSA 273-A, as well as the testimony and exhibits in the case.

The SEA's claim that Director Beecher did not in fact reach agreement on the proposed composition of the bargaining units or that NEPBA filings are misleading as to Director Beecher are without merit. These claims are contradicted by Director Beecher's signature on the NEPBA petitions and by Director Beecher's unequivocal testimony at the hearing. Additionally, both Commissioner Flynn and Assistant Commissioner Sweeney approved of Director Beecher's actions, as both stated in a meeting with SEA representatives present that would have done the same thing that Director Beecher did. In short, the SEA did not introduce any evidence to support the contention that Director Beecher did not agree. Further, as discussed elsewhere in this decision, the PELRB otherwise finds that the proposed composition of the units is appropriate.

The SEA also claims that Pub 302.05 bars NEPBA's modification requests because any change in circumstances happened prior to negotiations on the collective bargaining agreement presently in force (Joint Exhibit 2). This argument fails for several reasons. First, the SEA does not analyze the applicable portion of Pub 302.05 in its entirety. Pub 302.05 (b)(2) states a petition shall be denied if:

"(2) The petition attempts to modify the composition of a bargaining unit *negotiated by*

the parties and the circumstances alleged to have changed, actually changed prior to negotiations on the collective bargaining agreement presently in force." (emphasis added)

The SEA did not introduce any evidence that the underlying bargaining unit was negotiated by the parties. In fact, the last time the underlying bargaining unit was addressed was in a contested modification proceeding, which resulted in Decision No. 2002-045, Case No. S-0315-2. Interestingly, in that decision the hearing officer also addressed whether Pub 302.05 served to bar the SEA's modification petition, and ruled that it did not because of the lack of evidence that the unit was ever negotiated. Decision No. 2002-045 at 6. Additionally, the Pub 302.05 bar applies, if at all in this case, only to the SEA and the DMV, and not to NEPBA. This serves the underlying purpose of the Pub 302.05 bar, which is to prevent the parties to the CBA from agreeing to unit composition and then entering the CBA on that basis and thereafter subsequently appearing at the PELRB and, contrary to the prior agreement on unit composition and the CBA, asking the PELRB to alter the bargaining unit. Additionally, as discussed elsewhere in this decision, there have been changes in circumstances subsequent to any negotiations which resulted in the current CBA, which was effective July 1, 2005, including changes in the size of the Bureau of Highway Patrol and changes in its structure.

The crux of the SEA's objection to the composition of the proposed units is the inclusion of Sergeants in the supervisory unit. The SEA contends that Highway Patrol Sergeants do not qualify as supervisors within the meaning of RSA 273-A:8, II.

In general, the PELRB "should take into consideration the principle of community of interest" when determining the appropriate bargaining unit. RSA 273-A:8, I. Some criteria relevant to the community of interest include whether employees have the same conditions of employment, have a history of workable and acceptable collective negotiations, are in the same historic craft of profession, and function in the same organizational unit. RSA 273-A:8, I (a-d). Additionally, per Pub 302.02, the PELRB is also required to consider a common geographic location of the proposed unit as well as the presence of common work rules, personnel practices, salary and fringe benefit structures, and the self-felt community of interest of employees as further evidence of a community of interest.

RSA 273-A:8, II provides that "[p]ersons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise." The PELRB has "broad subject matter jurisdiction to determine and certify bargaining units to enforce the provisions of that chapter (RSA 273-A)." Appeal of SAU #21, 126 N.H. 95, 97 (1985). Important factors to consider include an "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. 429, 432 (1999) (citing Appeal of East Derry Fire Precinct, 137 N.H. , 610 (1993). Supervisory employees are generally separated from rank and file employees because there is "a strong potential for a conflict of interest to arise between the two groups." Appeal of Univ. System of New Hampshire, 131 N.H. 368, 376 (1988).

As a threshold matter, it is noted that the "SEA does not dispute the community of interest exits between all Highway Patrol Officers within the Division of Motor Vehicles, Bureau of Highway Patrol (sic)." (SEA Brief at 7). The PELRB specifically finds that a community of

interest exists based upon the evidence in these cases and the criteria set forth in RSA 273-A:8, I and Pub 302.02. The PELRB further finds that the factual basis for this community of interest was established at the hearing and is fairly and accurately depicted in NEPBA's Brief at 9-11.

With respect to the status of the Sergeants, the PELRB finds that there was varied and sufficient evidence which demonstrates that Sergeants exercise supervisory authority involving the significant exercise of discretion and are supervisors within the meaning of RSA 273-A:8, II. This evidence specifically concerned Sergeant's responsibilities, duties, and activities with respect to evaluation of employees, supervision of employees, and discipline of employees. This evidence is addressed at length in the Findings of Fact and won't be recounted in detail here except to mention a few examples. Petitioner Exhibit 17 and related testimony demonstrates that Sergeants, like Lieutenants and Captains, regularly conduct formal employee evaluations. According to Sergeant Armaganian, such evaluations can have an impact on an employee's ability to get or keep merit increases. In contrast, there was no evidence that Officers I and II or Corporals perform such evaluations. Additionally, petitioner Exhibit 4 and 9 as well as related testimony outlined a number of areas where Sergeants exercise supervisory authority, including assignment of work and oversight of assigned work. Finally, Sergeants are engaged in the disciplinary process and do issue verbal and written reprimands and are also involved when more formal disciplinary activities occur – as Sergeant Armaganian testified, Sergeants present the outcome of these more formal disciplinary proceedings to the involved Officer or Corporal.

Accordingly, NEPBA's consolidated petitions to certify and modify two bargaining units with the positions outlined above are granted. The Patrol Officers' Unit shall consist of 63 patrol officers and 3 corporals (Case No. P-0787). The Supervisors' Unit shall consist of 9 Sergeants, 3 Lieutenants, 1 Captain, and 1 Executive Major (Case No. P-0788). These matters shall proceed to election.

Finally, it should be noted that this order constitutes the full decision referenced in the abbreviated order issued October 3, 2006 (Decision No. 2006-169).

So Ordered.

Date Issued: October 5, 2006

Doug Ingersoll

Douglas L. Ingersoll, Esq.
Hearing Officer

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