



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. 2024-126

Appearances:

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

Mark T. Broth, 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 (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 proposed the following bargaining unit: Fire Captain, Police Lieutenant/Captain¹, and Building/Health Code Official. The Town objected to the petition on the ground that the proposed bargaining unit lacked a community of interest as required under RSA 273-A:8. 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 proposed bargaining unit was approved. See PELRB Decision No. 2022-068 (May

¹The Captain's position was vacant at the time of hearing and was not addressed at the hearing. See Findings of Fact at 4 & 6 below.

3, 2022). The PELRB denied the Town's motions for review on July 13, 2022. See PELRB Decision No. 2022-105. On July 14, 2022, the PELRB issued an Order for Election. See PELRB Decision No. 2022-107. On August 12, 2022, the Town filed a Motion for Rehearing pursuant to Admin. R. Pub 205.02, to which the Union subsequently objected. The motion for rehearing was denied on September 28, 2022. See PELRB Decision No. 2022-155. The Town appealed the PELRB Decision to the Supreme Court. On December 2, 2022, the Supreme Court granted the Town's motion to withdraw its appeal without prejudice. See *Appeal of Town of Bedford*, Supreme Court Case No. 2022-0603.

In the interim, pursuant to the PELRB Order for Election, the Town submitted an employee list which showed that there were only nine employees in the approved bargaining unit. On August 18, 2022, a pre-election conference was held, at which time the parties indicated that several of Lieutenant positions were temporarily vacant and agreed to continue the pre-election and election proceedings until September 1, 2022 at which time they would submit a status report clarifying whether the hiring/promotion process had been completed for the vacant Police Lieutenant position. Between September, 2022 and January, 2024, the parties submitted eight status reports/requests to hold in abeyance, claiming that the Town's promotional/hiring process had not yet been completed, all of which the PELRB granted.

On January 5, 2024, the Union filed a status report and a request for a hearing claiming that the Town engaged in restructuring not authorized or funded by the Town Council, which resulted in removal of one of the positions from the bargaining unit, lowering the number of the employees to nine again. The Union proposed that the unit be modified to include the new position. The PELRB held a status conference on January 19, 2024. See PELRB Decision No. 2024-013. Pursuant to PELRB Decision No. 2024-013, the Union filed a motion to amend the petition and a request for a hearing. In its motion to amend, the Union requests the inclusion of

the positions of Police Captain of the Operations Support Division/Bureau (Support Bureau Captain) and Police Captain of the Operations Bureau (Operations Bureau Captain) in the previously approved bargaining unit. The Union's motion to amend the certification petition was granted on April 4, 2024. See PELRB Decision No. 2024-051.

In its request to add the Captain position to the bargaining unit, the Union claims that the newly created Support Bureau Captain position is occupied by the same person and performs the same functions as Police Lieutenant of Operation Support Division/Bureau position which is included in the bargaining unit; that the Support Bureau Captain supervises the same people that the Support Bureau Lieutenant previously supervised; that the position of Support Bureau Lieutenant has been eliminated; and that the Support Bureau Captain position should be included in the bargaining unit because it was simply renamed from a Lieutenant to a Captain. The Union also argues, among other things, that the Operations Bureau Captain position should be included in the bargaining unit because it has a community of interest with the rest of the unit and is no longer vacant. The Town objects to the inclusion of the Captains in the bargaining unit on the ground that the Captains are supervisory employees within the meaning of RSA 273-A:8, II and cannot be included in the same unit with employees they supervise, here, Police Lieutenants.

A hearing on the inclusion of Police Captain positions in the bargaining unit was conducted on April 23, 2024 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. Pursuant to PELRB Decision No. 2024-051, the record for decision includes the evidence submitted in the prior hearing in this matter as well as any additional evidence accepted into the record at the April 23, 2024 hearing. The parties filed post-hearing briefs on May 23, 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.

2. In 2018, the Bedford Police Department was reorganized. In the reorganization plan that went into effect on January 29, 2018, the Police Chief recognized that “[t]he role and function of the Captain has been that of a Deputy Chief since 2011,” and converted then-existing Captain position into the Deputy Chief position. The Chief also stated as follows in the reorganization plan:

... In this case, the role, duties and responsibilities of the Captain are more accurately defined as a Deputy Chief than Captain as the position requires this officer to act in the place of the Chief and to have the authority, clearly by title as well as by rank, to exercise that authority in the absence of the Chief of Police.

The Deputy Chief, as is traditional in all law enforcement agencies large and small, serves as the primary “enforcer” of discipline in the agency and must have the authority to exercise that responsibility in both rank and position within the Department.

See Town Exhibit A.

3. The 2018 reorganization also included conversion of the Patrol Division into the Patrol Operations Division under the command of a Captain who, in turn, reported to the Deputy Chief. Also, the former Lieutenant/Communications and Records Division became the Lieutenant/Operations Support Division, who reported to the Deputy Chief. In addition to the communications, records, and department training programs, the Operations Support Division became responsible for the following divisions and programs: community policing division, recruitment, fleet operations, special events, and police detail assignments. See Town Exhibit A.

4. On December 6, 2021, the Union filed a petition to be certified as an exclusive representative of the following proposed bargaining unit: Police Lieutenant/Captain, Fire Captain, and Building/Health Code Official. At the time of the filing, the Town employed three Police

Lieutenants, six Fire Captains, and one Building/Health Code Official. The Police Captain position, as well as an additional Police Lieutenant position, were temporarily vacant. See Stipulated Facts at J. The Town objected to the petition claiming that the proposed bargaining unit lacked a community of interest, and a hearing on the objection was conducted on March 11, 2022.

5. After the March 11, 2022 hearing, the undersigned hearing officer issued a decision approving the following bargaining unit: Police Lieutenant, Fire Captain, and Building/Health Code Official. See PELRB Decision No. 2022-068 (May 3, 2022). This decision was affirmed by the Board. See PELRB Decision Nos. 2022-105 and 2022-155. The approved unit included the Support Bureau Lieutenant position which was at the time occupied by Kevin Bowen.

6. The original petition listed a Police Captain position. However, the position was vacant at the time of the hearing 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 was not addressed in the decision and was not included in the approved bargaining unit.

7. In 2023, after the approval of the bargaining unit, the Police Department has undergone further reorganization.² Under the 2023 reorganization plan, the Operations Support Division was redesignated as the Operations Support Bureau under the command of a Captain. Support Lieutenant Bowen was promoted to the position of Captain of the Support Bureau. See Town Exhibit B. Position of Support Bureau Lieutenant no longer exists.

8. The Police Department is currently divided into two bureaus: Operations Bureau and Support Bureau. Union Exhibit 3.

²The Union's assertion that the 2023 reorganization was pretextual and should be declared "null and void as it was not authorized and funded by the Town Council nor approved by the voters of Bedford" is not addressed in this decision because it is outside the scope of a unit determination/representation proceedings.

9. Currently there is no job description specific to the Support Bureau Captain position. The job description for the Captain position was last updated in 2007. See Union Exhibit 4.

10. The 2007 Captain job description provides in part as follows:

Typical Duties:

The following are some of the typical duties of the Police Captain. It is not intended to be exclusive of other related duties which may be required from time to time:

1. Administer the affairs and operations of his Division, assigning personnel in sufficient manner to ensure accomplishment of all police tasks within their jurisdiction.
2. Assist in the administration of the Department, as directed by the Chief or The Deputy Chief.
3. Assist in Department training programs, as directed by the Chief or the Deputy Chief..
- ...
5. Investigate personnel complaints, as assigned by the Chief or the Deputy Chief.
6. Maintain discipline and morale within his Division, submitting written reports, as directed, in all cases of infractions by members or where a member has consistently refused to improve his conduct, despite efforts himself and his supervisor.
- ...
9. Observe all aspects of his Division's performance and submit to the Chief a written report of any changes or revisions in Department procedures that would increase efficiency or effectiveness.
10. Organize and assign duties to ensure that his Division is properly performing Department functions.
- ...
12. Prepare efficiency ratings of Department personnel, as directed by the Chief.

...
Summary:

The Police Captain is a mid-level administration position responsible for the supervision and control of all members *of his assigned division*, and for their efficiency and effectiveness as members of the Department. The Captain performs administrative and operational functions *relative to the assigned division as directed by the Chief or Deputy Chief*. In the absence of the Chief and Deputy Chief, the Captain may perform the duties of the Chief, subject to limitation by the Chief.

See Union Exhibit 4 (emphasis added).

11. The Support Bureau/Division does not have any Lieutenants permanently assigned to it. Union Exhibit 3, Town Exhibit C. The Support Bureau Captain does not have any Lieutenants in his chain of command and has never evaluated a Lieutenant. Neither does he supervise, evaluate, or discipline any other members of the bargaining unit.

12. Current Police Chief Daniel Doudi (formerly, Deputy Chief) temporarily assigned Operations Bureau Lieutenant to the Support Bureau to help organize CALEA (Committee on Accreditation of Law Enforcement Agencies) certification. The Support Bureau Captain has not evaluated, or disciplined the Operations Bureau Lieutenant or recommended a disciplinary action.

13. There is no evidence that the Support Bureau will have a Lieutenant position in the near future.

14. In the absence of the Operations Bureau Captain, the Support Bureau Captain does not take his place.

15. The Support Bureau Captain's current duties and responsibilities listed in the Chief's 2023 reorganization plan are the same as duties and responsibilities of the Support Bureau Lieutenant, a position that is already included in the bargaining unit. Doudi Testimony.

16. The evidence is insufficient to show that the Captains assign overtime work, approve leave requests, or set schedules for any Lieutenant or other bargaining unit employee.

17. The 2007 Captain's job description does not specifically authorize the Captains to discipline Lieutenants. See Union 4. The Captains are limited to verbal counseling/warning, the lowest form of discipline under the personnel rules, which cannot be placed in an employee's personnel file without a prior authorization by the Police Chief. This job description does not

specifically authorize Captains to recommend a disciplinary action, such as suspension or termination. If verbal counseling/warning does not work, the Captains are required to report it up the chain of command and are not authorized to use their discretion to discipline employees.

18. The Captains' obligation to report an employee's infraction up the chain of command is no different from any other police department employees' obligation to report an infraction.

19. The evidence is insufficient to prove that the Captains make hiring decisions or recommend hiring or promotion of Lieutenants. Promotion recommendations are usually made by the Chief. See Town Exhibits A & B.

20. The Town's personnel manual provides that only the Police Chief or Town Manager may issue a written warning, suspension, or termination to an employee. Jt. Ex. 22 p. 48-49. The Town disciplinary procedure is very detailed and provides a specific list of infractions that would warrant a dismissal and other forms of discipline.

21. The Captains' role in internal investigations is limited to collecting facts and then submitting them up the chain of command for review and action. The Captains do not recommend suspension or termination and act as factfinders when assigned by the Chief. The Chief has authority to assign an employee of any rank to investigate another employee.

22. The Operations Bureau Captain conducts performance evaluation of Operations Bureau Lieutenants. See Town Exhibit F. The evaluations are then submitted to the Police Chief, Town Manager, and Personnel Director. Any one of these individuals has authority to require changes to the document or override the evaluation. The evaluations do not affect wages or cost of living adjustments.

23. The evidence is insufficient to prove that the Captains' evaluations address whether or not a Lieutenant should receive a raise, promotion, demotion, suspension, or termination.

24. Captains, like other employees in the bargaining unit, perform their duties pursuant to detailed directions found in departmental standard operating procedures.

25. Captains' benefits, like those of other members of the bargaining unit, are determined by the Town Council. Their pay raises and promotions are approved by the Town Council.

26. The Captains have a self-felt community of interest with other unit employees and work in the same geographic location as other bargaining unit employees.

27. The terms and conditions of employment of Captains and the rest of the bargaining unit employee are governed by the same Town of Bedford Personnel Policies Manual (Manual). 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.

28. Common work rules and personnel practices apply to Captains as well as the rest of the bargaining unit employees. See Joint Exhibit 22.

29. Captains are in the same group in the New Hampshire Retirement System as other employees in the bargaining unit.

Decision and Order

Decision Summary

The Captain positions are added to the bargaining unit for the following reasons: (1) the Support Bureau Captain does not have any Lieutenants or other bargaining unit positions in his chain of command; (2) the Support Bureau Captain's position is essentially the same as the Support Bureau Lieutenant position which has been previously determined as appropriate for the inclusion in the bargaining unit; (3) the Captains do not exercise "supervisory authority involving the significant exercise of discretion"; and (4) the Captains have a community of interest with the rest of the bargaining unit.

Jurisdiction

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

Discussion

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." (Emphasis added.)³ The Supreme Court recognized that "[d]etermining where in the pyramid of administrative functions an employee becomes part of 'management' is not a simple task." *In re Nashua Association of School Principals*, 119 N.H. 90, 93 (1979). The burden of establishing supervisory status rests on the party alleging that status. See Admin R. Pub 201.06 (c). See also The Developing Labor Law, Vol II, 2264 (Higgins, 5th Ed. 2006).

The term "supervisory" has special meaning under RSA 273-A:8, II. See *AFSCME Council 93, Local 1801, AFL-CIO and Derry Coop. School District (SAU 10)*, PELRB Decision

³Discretion is defined as an "ability to make responsible decision" or "individual choice or judgement ... power of free decision or latitude of choice within certain legal bounds..." See Merriam Webster's Collegiate Dictionary, 332 (10th ed. 1993).

No. 2019-043. Analysis of the supervisory status is guided in part by the standard articulated in *Appeal of East Derry Fire Precinct*, 137 N.H. 607, 611 (1993), which provides that “[a] supervisory relationship exists when the supervisor is genuinely vested with significant supervisory authority that may be exerted or withheld depending on his or her discretion“; and that “some employees performing supervisory functions in accordance with professional norms will not be vested with the ‘supervisory authority involving the significant exercise of discretion’ described by RSA 273-A:8, II.” *Id.*

Supervisory employees are separated from the employees they supervise “to avoid conflicts between the two groups because of the differing duties and relationships which characterize each group.” *Appeal of Town of Stratham*, 144 N.H. 429, 432 (1999). It is therefore proper to examine “the degree of significance of the exercise of discretion as well as the propensity to create conflict within the same bargaining unit because of the differing duties and relationships.” See *Tilton Police Union, NEPBA Local 29 and Town of Tilton*, PELRB 2007-100. 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*, *supra*, 144 N.H. at 432. However, the fact that an employee has some authority in the areas of discipline, evaluation, and hiring “is the start, and not the end, of the analysis because positions possessing some authority in these areas are not *per se* supervisors within the meaning of the statute.” *Tilton Police Union*, *supra*, PELRB Decision No. 2007-100. A proper assessment of whether a position is supervisory “requires consideration of matters such as the nature, extent, character and quality of [employee’s] authority and involvement in the areas of discipline, evaluations, and hiring.” See *id.* For example, in *East Derry Fire Precinct* case, the facts that evaluations had implications on hiring and termination decisions and the employees at issue had disciplinary authority were crucial to the Supreme Court’s finding that the employees were

supervisory within the meaning of the statute. See *Tilton Police Union*, supra, PELRB Decision No. 2007-100.

In *Teamsters Local Union 633 of New Hampshire and Rockingham County*, PELRB Decision No. 2011-203, corrections sergeants were included in the bargaining unit with officers because the degree of supervisory authority exercised by the sergeants was not likely to create a conflict within the proposed bargaining unit. Although sergeants completed annual evaluation forms for other employees in the bargaining unit, the evaluation forms were then moved up the chain of command and each superior officer in that chain had authority to override the evaluation prepared by a sergeant. See *id.* at 11. There was also insufficient evidence that the evaluations were a significant factor in determining pay increases, promotions, demotions, discipline, or terminations, and only commissioners had authority to hire, demote, promote, or terminate employees. *Id.* Sergeants could issue verbal warnings but did not have authority to issue written warnings, to conduct internal affairs investigations, or to recommend demotion or termination. See *id.* at 5-6. The supervisory authority exercised by sergeants was found to be relatively limited and in nature of an employee performing some supervisory functions in accordance with professional norms, akin to a “working foreman.” *Id.* at 11. The extent to which sergeants were involved in discipline, evaluation, and the hiring processes, and the nature of their involvement did not rise to the level of the significant exercise of discretion that would warrant exclusion from the bargaining unit. *Id.*

Likewise in *Tilton Police Union, NEPBA Local 29 and Town of Tilton*, Decision No. 2007-100, the PELRB found that police sergeants were not statutory supervisory employees despite the evidence showing that they were involved to some degree in discipline, evaluations, and hiring. *Id.* at 5. A sergeant’s disciplinary authority was limited to the issuance of verbal warnings, the mildest form of discipline. The sergeant’s disciplinary authority did not extend to

issuing of written reprimand, demotion, suspension without pay, or dismissal. Although there was evidence that sergeants completed written evaluations, which were subject to review by the Chief and which were used in connection with the annual review of merit pay increases, there was limited evidence as to the merit pay review process or the weight given to evaluations completed by sergeants in that process. *Id.* In the evaluation process, sergeants did not address whether or not an officer should receive a raise, promotion, demotion, suspension, or termination. *Id.* There was no evidence that the purpose of the evaluations included “the hiring and/or termination of officers, a fact present and highlighted by the Supreme Court in *Appeal of East Derry Fire Precinct.*” *Id.* See also *International Brotherhood of Teamsters, Local 633 of N.H. and State of New Hampshire, Administrative Office of the Courts*, Decision No. 2009-048 (finding court security officer II was not statutory supervisor as evidence was insufficient to establish that he was engaged in matters of employee hiring, firing, discipline, or evaluation in a meaningful or significant way); *Hampton Falls Police Union, NEPBA and Town of Hampton Falls*, Decision No. 2009-017 (finding police lieutenant was not statutory supervisor because of lack evidence of hiring and firing authority and insufficient evidence of authority to evaluate and discipline); and *Appeal of City of Concord*, 123 N.H. 256, 257-58 (1983) (finding fire department battalion chiefs were not statutory supervisory employees “[b]ecause the record does not indicate that the battalion chiefs exercise supervisory authority entailing significant discretion”).

Similarly, in *Concord Police Supervisors Association v. City of Concord*, Decision No. 2007-150, the PELRB found that the evidence was insufficient to show that supervision exercised by lieutenants in relationship to sergeants rose to the level of significant exercise of discretions. The factfinder considered the following factors, among others:

It is accurate to characterize the City's police department as a para-military organization with specific rank assignments and a chain of command structure. All of its Lieutenants and Sergeants are expected, and it appears do, perform pursuant to direction found in many departmental standard operating procedures... A Lieutenant's superior rank position to a Sergeant in this regard is more one of monitoring the application by the Sergeant of professional standards to be implemented by non-ranking police officers.

Id. at 9. In addition, in *Concord*, the lieutenant's authority to discipline sergeants was limited because he only had authority to issue an oral reprimand, the lowest form of discipline. *Id.* at 10. A lieutenant could file an incident report regarding a sergeant's action, which was a formatted document passed up the chain of command as information upon which any discipline, if necessary, would be issued by the major or the police chief, or town manager. *Id.* There were three levels of supervision above lieutenant. Although the lieutenant's job description stated that he had authority to evaluate subordinates, there was insufficient evidence that the annual evaluation affected hiring, termination, or wages. Evaluations were reviewed by a major and the chief. *Id.* Based on these evidence, the lieutenant was not a supervisory employee within the meaning of RSA 273-A:8, II.

In contrast, in *Appeal of University System of N.H.*, 131 N.H. 368, 376 (1988), the Supreme Court held that the PELRB had incorrectly determined that the firefighter officers were not supervisory employees because, among other things, officers' evaluations were given weight in granting merit pay increases and were considered in terminating new employees, and the officers' supervisory duties included assigning work, ensuring the shifts were fully staffed, and lacking a senior officer, taking command at the scene of a fire. *Id.* In addition, the officers' disciplinary authority included assessing the firefighters' fitness for duty and issuing warnings. *Id.*

Likewise, in *AFSCME Council 93, Belmont Town Employees and Town of Belmont*, Decision No. 2008-165, the PELRB denied the union's modification petition seeking to add

police sergeant to the unit containing, among others, police patrolmen. The PELRB based its decision on the findings, among others, that the sergeant (1) had authority to issue verbal discipline and written warnings, which were placed in employee's personnel file, independent of the Chief; (2) was the first line supervisor for union grievances; (3) participated and made recommendations regarding discipline at the monthly staff meetings; (4) approved leave requests; (5) conducted internal affairs investigations; and (6) evaluated other bargaining unit employees. The hearing officer found that these facts established a propensity to create conflict within the bargaining unit and that the police sergeant position was a supervisory position within the meaning of RSA 273-A:8, II.

In this case, the Captain position is akin to the sergeant position in *Rockingham County* and *Tilton* and the lieutenant position in *Concord*. Specifically, Captains have no authority to issue written warnings (unlike police sergeants in *Belmont* case), suspensions, or terminations. The evidence is insufficient to show that they have authority to recommend suspensions, terminations, promotions or hiring. Such authority is commonly specifically set forth in job descriptions, which is not the case here. Although they have authority to issue verbal warnings, the lowest form of discipline, to a Lieutenant, these warnings cannot be placed in a Lieutenant's personnel file without prior approval or permission from the Chief. The disciplinary authority is set forth in great detail in the Town's personnel manual and lies with the Chief and the Town Manager. In addition, in the 2018 reorganization plan letter, the Chief recognized that the Deputy Chief, and not a Captain, is the "primary 'enforcer' of discipline in the agency and must have the authority to exercise that responsibility in both rank and position within the Department"; and that the Deputy Chief takes over the agency in the Chief's absence. Moreover, based on the 2007 Captain job description, which includes a vague reference to maintaining "discipline and morale," it appears that such task is to be accomplished by submitting written reports up the chain

of command which is not sufficient to show significant exercise of discretion on the part of a Captain.

Further, although the Operations Bureau Captain has authority to evaluate Lieutenants in his chain of command, these evaluations, unlike firefighter officers' evaluations in *University System* or police sergeants' evaluations in *Belmont*, are not used in granting merit pay increases or in making decisions to suspend or terminate employees. Such authority is insufficient to show a significant exercise of discretion.

In addition, the Captains' involvement in internal investigations is limited to fact finding as directed by the Chief and the evidence is insufficient to show that they have authority to recommend suspension, termination, promotion, or hiring of Lieutenants. The evidence is also insufficient to prove that Captains approve leave requests, assign overtime, or set work schedules for Lieutenants. Based on the evidence, like the corrections sergeant position in *Rockingham County*, the Captain positions here is akin to that of a "working foremen" who perform their functions "in accordance with professional norms" and are not genuinely "vested with the supervisory authority involving the significant exercise of discretion described by RSA 273-A:8, II." See *Appeal of East Derry Fire Precinct*, supra, 137 N.H. 607, 611.

Moreover, the Support Bureau Captain position does not have any Lieutenants in his chain of command (Support Bureau), and he has not disciplined, evaluated, or otherwise supervised a Lieutenant. Furthermore, the evidence is insufficient to prove that he has authority to discipline, evaluate, assign work, or recommend discipline, promotion or pay raise to any Lieutenant in other division/bureau. Such authority is usually set forth in a job description, which is not the case here. The job description here specifically states that Captains are responsible for employees in their division, now Bureau. Here, the Operations Bureau Lieutenant is permanently assigned to a different division/bureau, has only a temporary narrow-purpose assignment to the

Support Bureau, and there is no evidence that the Town contemplates adding a Lieutenant position to the Support Bureau in the near future. Hence, the claim that the Support Bureau Captain is a statutory supervisor as to a Lieutenant is currently premature.

Based on the foregoing, the Captains are not supervisory employees within the meaning of RSA 273-A:8, II and their inclusion in this bargaining unit is unlikely to create a conflict within the unit.

Lastly, the Captains have a community of interest with the rest of the bargaining unit.

RSA 273-A:8, I provides in part as follows:

... 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.

In the present case, Captains, like other employees in the bargaining unit, are public safety middle management employees. The Captains' terms and conditions of employment, like those of the rest of the 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 Captains as well as other employees in the bargaining unit. In addition, Captains work in the same geographic location and have a self-felt community of interest with the other employees in the approved unit.

Furthermore, the Support Bureau Captain position is essentially the same as the Support Division/Bureau Lieutenant position, and it was previously found that Support Division/Bureau Lieutenant has a community of interest with the rest of the unit. See PELRB Decision No. 2022-068.

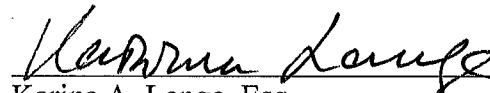
Lastly, the evidence is insufficient to prove that the inclusion of Captains in the approved bargaining unit will have a negative effect on the efficiency of government operations or that it will cause a bargaining unit employees' division of loyalties between the public employer and the employees' exclusive representative. See Admin. R. Pub 302.02 (c).

Based on the foregoing, the Captain positions are added to the previously approved bargaining unit, and the updated unit description is as follows: Police Lieutenant, Police Captain of Operations Support Bureau, Police Captain of Operations Bureau, Fire Captain, and

Building/Health Code Official. 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 amended order for election will be issued in due course. The Town shall submit an updated list of employees with addresses and a pre-election conference shall be conducted pursuant to Admin. R. Pub 303.02.

So ordered.

Date: 07/16/2024



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

Distribution: John Krupski, Esq.
Anna B. Cole, Esq.
Mark T. Broth, Esq.