



NH Supreme Court reversed this decision on March 25, 1992, Slip Opinion No. 90-545. 135 N.H. 421 (1992).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, S.E.I.U., LOCAL 1984
Petitioner
and
CITY OF LACONIA, NEW HAMPSHIRE
Respondent

CASE NO. S-0384
DECISION NO. 90-43

APPEARANCES

Representing the State Employees Association of N.H., SEIU, Local 1984:

Chris Henchey, Chief Negotiator

Representing the City of Laconia, N.H.:

James L. Burke, Esq., Counsel

Also appearing:

Daniel McKeever, City Manager
Norman O'Neil, Personnel Director/Purchasing Agent
Pat Crocket, Administrative Secretary to Youth Councilor

BACKGROUND

A petition for certification of a proposed unit composed of clerical, technical, trade and administrative, full and permanent part-time employees in the office of the City Manager, Departments of Personnel/Purchasing, Fiscal, Maintenance, Fire, Tax, City Clerk, Planning, Assessor's, Welfare, Parks and Recreation, Youth Services, Public Works and Community Development was filed by the State Employees Association of N.H., S.E.I.U., Local 1984 (SEA) on March 5, 1990.

Counsel for the City of Laconia (City) filed exceptions to the petition as filed stating that it included positions that were supervisory, confidential or otherwise improper; specifically objecting to (1) Executive Secretary to the City Manager as a confidential employee; (2) Administrative Secretaries to: Personnel Director, Planning Director and Building Official all on the basis of confidentiality; (3) Head Custodian, as supervisory; (4) Secretaries - out of six secretaries, the City objected to two; i.e., secretary to the Youth Councilor and the secretary in the Community Development office; (5) Deputy City Clerk, as supervisory; (6) Assistant Director, Community Development, currently listed on a petition for managers already on file with

PELRB; (7) Assessing Technician, as supervisory; (8) Welfare Technician, as supervisory; (9) Night Attendant, as temporary; (10) Program/Water Front Director, as supervisory; (11) Youth Councilor, due to source of funding; (12) Officer Manager/Secretary, as a confidential employee; (13) Senior Engineering Technician, as supervisory; (14) Superintendent of Streets, as supervisory; (15) Superintendent of Sewers, as supervisory; (16) General Foreman, as supervisory; (17) Community Development Technicians, due to source of funding.

A unit determination hearing was held in the Council Chambers, City Hall in Laconia on May 10, 1990 with all parties represented.

Prior to commencement of the hearing, the parties stated that an agreement had been reached on several of the positions. Agreement as follows:

INCLUDED: Account Clerks, Supervisor of Payroll Accounts, Assistant Fiscal Officer, Head Custodian, Custodians, Secretaries (4), Chief Mechanic, Deputy Tax Collector, Clerk-Typist, Deputy City Clerk, Assistant Building Officer, Administrative Assistant to Planning Director and Building Official, Office Clerk, Assessing Technician II, Welfare Technician, Groundsmen, Program/Water Front Director, Officer Manager/Secretary, Senior Engineering Technician, Superintendent - Street, Superintendent - Sewers, Pumping Station Attendant, Engineering Technician, General Foreman, Foremen, and Scale Operator.

EXCLUDED: Executive Secretary to City Manager, Assistant Director - Community Development, Night Attendant.

POSITION IN QUESTION:

Administrative Secretary to Personnel Director/Purchasing Agent, Secretary to Youth Councilor, Secretary in Community Development Office, Youth Councilor and the Community Development Technicians.

OTHER: City stated that the position of Parking Meter Collector did not exist under the City's Wage and Compensation Plan and the person occupying that position is characterized as a Foreman and as such, the City had no objections to its inclusion in the unit.

FINDINGS OF FACT

1. The City's objection to the Secretaries in Youth Services and in the Community Development Office and the Community Development Technicians solely based on the source of funding. The city emphasized that the programs were funded partially by grants and funds allocated at town meetings; i.e., Belmont, Gilford and Laconia with the possibility of participation by other communities. In addition, participation in the program was voluntary in nature and a city or town could elect to withdraw from a program at any time, thereby in essence making such programs temporary in nature.

RSA 273-A:1, IX (d) in its definition of "public employee" is explicit in that it states:

"no employee shall be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed."

2. PELRB does not exclude all confidential employees who act in a confidential capacity to persons who are privy to and help formulate, determine and effectuate certain management policies, it only excludes those employees who act in a confidential capacity to persons who formulate management policies in the field of labor relations or who regularly have access to confidential information concerning anticipated changes resulting from collective bargaining negotiations. Those employees who merely have access to personnel or statistical information upon which an employer's labor relations policy is based or who have access to labor relations information which has become known to the union are not confidential employees and are not barred from being included in a collective bargaining unit.

DECISION AND ORDER

After complete consideration of the testimony and evidence on the positions in question, the Board hereby certifies a bargaining unit consisting of the following positions petitioned by S.E.I.U., Local 1984 S.E.A. of N.H.; Account Clerks, Administrative Secretary, Supervisor Payroll Accounts, Assistant Fiscal Officer, Head Custodian, Custodians, Secretary, Chief Mechanic, Clerk Typist, Deputy Tax Collector, Deputy City Clerk, Assistant Building Officer, Office Clerk, Assessing Technician, Welfare Technician, Groundsmen, Water Front Director, Youth Councilor, Office Manager/Secretary, Senior Engineer Technician, Superintendent of Streets, Superintendent of Sewers, Pumping Station Attendant, Engineering Technician, General Foreman, Foremen, Scale Operator and Parking Meter Collector.

Excluded from the bargaining unit by mutual agreement of the parties, Executive Secretary to City Manager as confidential. The Assistant Director of Community Development and Night Attendant were withdrawn from the petition by the parties.

An election to determine if the employees of the unit wish to be represented by the State Employees Association of New Hampshire for the purpose of collective bargaining and settlement of grievances will be conducted by PELRB as expeditiously as possible in accordance with RSA 273-A:10 and PELRB Rules and Regulations Pub 303.

Signed this 24th day of May, 1990.


EDWARD J. HASELTINE, Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present, Executive Director, Evelyn C. LeBrun.