



NH Supreme Court reversed this decision on October 27, 1995, Slip Opinion No. 94-305, 140 NH 343 (1995).

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

---

AFSCME COUNCIL 93 :  
 :  
 Petitioner :  
 :  
 v. :  
 :  
 TOWN OF NEWPORT, N.H. :  
 :  
 Respondent :  
 :

---

CASE NO. A-0560

DECISION NO. 91-76

APPEARANCES

Representing Town of Newport, N.H.:

Robert Tawney, Chief Negotiator

Representing AFSCME Council #93:

James C. Anderson, Staff Rep.

Also appearing:

Daniel O'Neil, Town of Newport  
Floyd Roberts , Town of Newport  
John Marcotte, Town of Newport  
Rob Spaulding, Town of Newport  
Peter Cadenhead, Newport Fire  
Michael Flitton, Newport Water Dept.  
Larry Richardson

BACKGROUND

AFSCME, Council 93 (AFSCME) petitioned for a unit of all full-time and part-time employees in the highway, cemetery, recreation, water & sewer and fire departments employed by the Town of Newport, N.H. (TOWN).

The Town, through the Town Manager, Daniel P. O'Neill, objected to the proposed unit on the basis of community of interest and supervisory. The Town also objected to statements made by AFSCME had made relative to efforts made to reach agreement with the Town prior to submission of the petition and requested denial of the petition.

A hearing was held in the Board's office on July 18, 1991 with all parties represented.

FINDINGS OF FACT

1. AFSCME only effort to reach agreement on the composition of the unit was made in a cover letter to the Town Manager with a copy of the petition itself being submitted to PELRB on the same date.
2. Although there existed some dispute on the good faith effort to reach agreement on the unit, (AFSCME in their letter of April 10, 1991 did request a meeting with the Town Manager to discuss concerns) it is not cause to deny the petition and employees of their rights under 273-A.
3. By mutual agreement AFSCME withdrew its request to include part-time employees.
4. The Fire Fighter/Deputy Chief must be excluded in accordance with RSA 273-A:8, II as supervisory.
5. The employees meet the necessary requirement under the community of interest section of the statute. In small towns, of which New Hampshire has many, all employees of the Town have a self-felt community of interest, all work and are paid by the same employer, etc.
6. Because the position of Executive Director is still vacant and because of the Board's workload and delay in scheduling cases and rendering of decisions, employees should not be penalized for the Board's failure to conduct an election prior to October 4th, therefore, the time limits are waived.

DECISION AND ORDER

A unit is hereby created which includes all full-time employees of the Town of Newport, namely: Working Foreman, Head Mechanic, Mechanic, Clerk, Truck Drivers/ Equipment Operators, Laborers, Utility Technician, Sewage Treatment Operator, Fire Lieutenant, Superintendent Water/Sewer, Superintendent of Cemetary/Grounds, and Superintendent Sewage Treatment Plant.

EXCLUDED from the Unit: Fire Chief, Deputy Chief and Superintendent of Highways.

An election should be held by PELRB in accordance with RSA 273-A:10 and PELRB Rules and Regulations as expeditiously as possible.

Original decision signed September 30, 1991.

Correction signed this 11th day of October, 1991.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.