

NH Supreme Court declined appeal of this decision on February 17, 1989, NH Supreme Court Case No. 88-453.

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF SOMERSWORTH, NEW HAMPSHIRE
Petitioner
v.
AMERICAN FEDERATION OF STATE, COUNTY:
AND MUNICIPAL EMPLOYEES, COUNCIL 93 :
LOCAL 863
Respondent

CASE NO. A-0529:3
DECISION NO. 88-25

APPEARANCES

Representing the City of Somersworth:

Dorothy Bickford, Esq., Counsel

Representing Local 863, AFSCME:

Harriett Casey, Staff Representative, Council 93

Also in Attendance:

- Philip Munck, City Manager
Gregory Mack, Director of Public Works
Carter W. Ames, General Foreman
Alfred Couture, Mechanic

BACKGROUND

Request for a Declaratory Judgment was filed by Counsel for the City of Somersworth (City) seeking a ruling as to whether a particular position, that of the General Foreman in the Public Works Dept., could properly be excluded from the bargaining unit of Public Works employees represented by Local 572 (a/k/a 863) under RSA 273-A:8. Specifically the City requests that PELRB declare the general foreman position "supervisory".

Local 863 AFSCME (Union) objected to the filing on the basis that the unit had been grandfathered under the provisions of RSA 273-A and did not nor had it ever listed specific positions within the unit under the recognition clause.

The recognition clause has always remained the same: -

Article I, Section I, RECOGNITION:

"The city of Somersworth hereby agrees and does hereby recognize the Union as the sole and exclusive representative of all the employees of the Highway Department except those employees who are in supervisory capacity or have the right to hire or fire, for the purpose of bargaining with respect to wages, hours of work and working conditions."

FINDINGS OF FACT

1. The City and Union met and negotiated the job description and wage rate for the foreman. Further, an agreement was reached that the "working foreman" classification would be changed to "General Foreman" and that the position would be part of the certified unit.
2. The Union knowing that the contract's recognition clause did not list specific positions did not request to modify the unit.
3. Two separate arbitration cases were heard involving the position in question, however, the arbitrators were only asked to rule on the seniority question and the question of supervisory was never raised by the City. The first award found Mr. Couture the senior employee and ordered a trial or probationary period; the second award, same issue, ruled the trial period was insufficient.
4. The City hired a consultant firm (Yarger) to study and design new job classifications for all employees and set up a pay plan. Employees were asked to describe their duties and responsibilities and were later interviewed by representatives for the consultant firm and a final rating system was devised.
5. The City Manager and the General Foreman together made the decision that the position did not belong in the unit despite the fact that negotiations and agreement had been reached at the bargaining table on the inclusion of the position and the rate of pay set for that position.
6. The City Manager worked out an agreement and gave the General Foreman a "Letter of employment agreement" giving him a wage increase plus other fringe benefits and advised him that he was now under the City's Personnel Rules and no longer under the protection of the Union.
7. Under the City Charter, the City Manager has the authority to hire and fire.
8. The duties and responsibilities of the General Foreman have not changed since the Yarger report.
9. The General Foreman still performs the same duties, has a route for plowing in winter, assists other employees and works under the direct supervision of the Director of Public Works.

CITY'S REQUEST FOR FINDINGS:

#1 Granted.

- #2 Granted as to language. Denies as to date of CBA. Recognition granted in accordance with CBA effective February 15, 1975 thru February 15, 1976.
- #3 Granted as to language. Same as in the 1975 CBA.
- #4-5-6-7-8-9 Granted.
- #10 Granted in part. General Foreman performs some of the duties of the former Highway Commissioner.
- #11 No evidence was presented on the Highway Comm. membership or non-membership in AFSCME.
- #12 Granted in that the Highway Commissioner was not a member of the unit.
- #13-14-15-16 Granted.
- #17 Granted as to what the City Manager thought, however, an agreement on inclusion and wages was reached at the bargaining table.
- #18-19 Neither granted nor denied. No evidence presented to prove that lack of knowledge.
- #20-21 Granted.
- #22-23 Granted, however, the degree of supervision is a key factor in determining inclusion or exclusion.
- #24 Granted in part. Duties coordinated under direction of Public Works Director who oversees the daily operations.
- #25-26-27-28-29 Granted.
- #30 Granted, that the General Foreman recommends, however ultimate decision rests with the City Manager.
- #31 Granted, that the General Foreman authorized to purchase parts and supplies within a certain price range.
- #32 Granted, that the testimony presented indicated that a representative for the Union stated he "should not," "could not" initiate disciplinary action.
- #33-34-35-36-37-38 Granted.
- #39 Granted, that the General Foreman exercises certain functions and responsibilities under direction of Public Works Director.
- #40 No evidence presented as the, the General Foreman's role in the administration of the CBA granted that he ensures the proper performance of the day to day work schedules.
- #41 Denied.
- #42 Denied. Article 3.2 of the agreement describes the manner in which overtime is to be divided.


- #43 Granted in that AFSCME and the City negotiated for the inclusion of the position in the certified unit.
- #44 Granted, that a grievance was filed on overtime involving the General Foreman.
- #45 Granted. The union has an obligation to represent a grievant.
- #46 Granted, that the General Foreman may believe that a policy of mandatory overtime may be necessary, however, no evidence presented at the hearing.
- #47 Denied, AFSCME position on mandatory overtime was not in evidence.
- #48 Granted, as to the Foreman's belief, but no evidence presented on this issue.
- #49 Denied. No evidence presented regarding scheduled lunch breaks.
- #50 Granted, that the Foreman and Union differ on their approach to involuntary overtime and lunch but matter is subject to negotiations.
- #51 Granted, that the Foreman has a self-felt community of interest with management.
- #52-53-54-55-56-57-58-59-60-61 Granted.
- #62 Granted. The Yarger evaluation summary showed the degree of supervision from 0 to 120 and General Foreman was rated at 80.
- #65 Denied.
- #66 Granted.

DECISION AND ORDER

Management entered into an agreement with respect to the composition of the unit and that must be considered to be an informed decision. Further, management representatives indicated consistently at the hearing that those obligations had not changed since the inception of the position.

The Board rules that the position fails to rise to the degree of significant supervisory discretion necessary to exclude it from the unit.

The position of General Foreman is still part of the certified unit and subject to the terms and conditions of the collective bargaining agreement between the City of Somersworth and AFSCME, Local 863.

  
JOHN BUCKLEY, Alternate Chairman

Signed this 9th day of May, 19 88.

By unanimous vote. Chairman Jack Buckley presiding. Members Richard E. Molan, Esq., Richard W. Roulx and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.