

NH Supreme Court vacated and remanded this decision on July 15, 1992, NH Supreme Court Case No. 90-598.



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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NEW HAMPSHIRE TROOPERS ASSOCIATION, INC. :  
 :  
 Petitioner :  
 :  
 v. :  
 :  
 STATE EMPLOYEES' ASSOCIATION OF NEW :  
 HAMPSHIRE, LOCAL 1984, SEIU :  
 Incumbent/Respondent :  
 :  
 and :  
 :  
 STATE OF NEW HAMPSHIRE, DEPT OF SAFETY, :  
 DIVISION OF STATE POLICE :  
 Respondent :  
 :

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CASE NO. P-0754  
DECISION NO. 90-109

APPEARANCES

Representing New Hampshire Troopers Association, Inc.:

Trooper Louis A. Copponi

Representing State Employees' Association of N.H.:

Chris Henchey, Chief Negotiator

Representing State of New Hampshire, Dept. of Safety:

Thomas F. Manning, Dir. of Management Relations

Also appearing:

Margo Hurley, S.E.A.  
Jean Chellis, S.E.A.  
Tr. Michael Doucette  
Lt. John Barthelmes  
Sgt. Bardon Flanders

Sgt. Paul Schwatka  
Tr. Michelle Cornellier  
Sgt. James Noyes  
Lt. Dwight Dodd  
Major Thomas F. Kennedy Jr.

BACKGROUND

On October 5, 1990, PELRB issued an oral order creating a new bargaining unit in accordance with the granted modification of the State Employees Association (SEA) and the State Police Unit.

A pre-election conference was scheduled for September 24, 1990, however, the State of New Hampshire (State) by its representative, Thomas Manning objected to the pre-election procedure and indicated that the State had not had an opportunity to be heard with respect to the composition of the bargaining unit, so they requested that the pre-election conference be postponed until such time as an evidentiary hearing could be held to determine who should be included in the modified unit.

The request for continuance was granted and a unit determination hearing was held on October 5, 1990 at the offices of the PELRB in Concord, New Hampshire.

Thomas Manning on behalf of the State objected to the inclusion of lieutenants, sergeants and corporals on the basis that these positions were supervisory exercising significant discretion over other members of the bargaining unit and should be excluded. He cited the PELRB decision in the Conway case, Decision No. 85-05.

Major Thomas Kennedy testified on his background from the rank of trooper trainee to trooper, up to his present rank of Major and indicated the amount of supervision he exercised at various ranks he had served and more specifically that of Corporal, Sergeant and Lieutenant.

Lt. Dwight Dodd, Troop E Commander, and Lt. John Barthelmes who commands the crime unit, indicated the amount of supervision they exercised over the various members in their units which includes sergeants and corporals.

Testimony was also taken from Sgt. James Noyes assigned to Troop E in Tamworth along with Sgt. Schwatka and Sgt. Bardon Flanders from different troops. All testified as to their training and authority with respect to the rank they currently hold.

Chris Henchey on behalf of SEA offered testimony as to the inclusion and the degree of supervision of the individuals exercised over the bargaining unit members. He testified with respect to the operation of the merit system and its relationship to state employees, more specifically that the Section 273-A:3 III which refers to the State Employees and rights under the merit system and the right to organize and be represented under 273-A. Henchey in his conclusion indicated that based on his analysis of 273-A, the degree of supervision exercised by corporals, sergeants and lieutenants did not fall within the exclusionary provision of the statute.

Tom Manning on behalf of the State in closing stated that sergeants should be excluded because of the degree of supervision exercised over other members of the bargaining unit specifically to the No. 2 person in command of the troop whenever the lieutenant commander is absent.

#### FINDINGS OF FACT

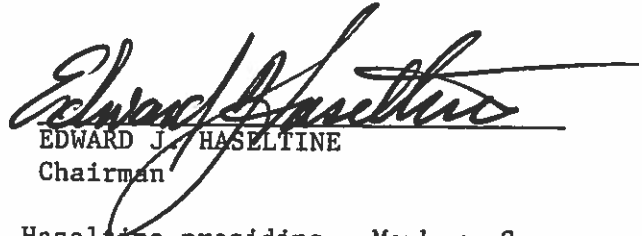
1. The supervisory responsibilities exercised by corporals and sergeants is not the major part of their job description and is exercised only as required as in any quasi military organization and does not rise to the level of significant exercises of discretion required for exclusion under 273-A:8, II.
2. The positions of Lieutenant's and above in the State Police organization do meet the test of requiring significant exercise of discretion and may not belong to the same bargaining unit as employees they supervise. They are in direct command of certain units with complete responsibility for operations of the units as they command or supervise.

ORDER

After considering all of the oral testimony and exhibits offered, which included the job descriptions for the sergeants, lieuteants, corporals and majors, PELRB ORDERS:

A bargaining unit is hereby created to be known as the sworn personnel of the State Police consisting of all sworn state police officers up to and including the rank of sergeant, all other sworn personnel above the rank of sergeant are excluded from this bargaining unit.

Signed this 17th day of October, 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.