



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NH Supreme Court affirmed in part, reversed in part this decision on December 30, 1988, Slip Opinion No. 87-376, 131 N.H. 368 (1988).

LOCAL 2253, INTERNATIONAL ASSOCIATION	:	
OF FIRE FIGHTERS	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. U-0612
	:	
DURHAM/ UNIVERSITY OF NEW HAMPSHIRE	:	DECISION NO. 87-43
FIRE DEPARTMENT	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing Local 2253, IAFF:

Richard E. Molan, Esq., Counsel

Representing Durham/UNH Fire Department:

Nicholas DiGiovanni, Esq., Counsel

Also appearing:

Gary W. Wulf, Vice Chancellor, UNH
Nancy Deane, Director of Human Resources
Robert P. Wood, Fire Chief
Russell Bassett, IAFF
Hubert Matheny, IAFF
John Stevens, IAFF
Michael Vogeley, IAFF
Dennis Pease, IAFF

BACKGROUND

A Petition for Certification of a proposed bargaining unit composed of four captains and twelve firefighters, all of whom are full-time employees of the Durham/UNH Fire Department was filed by Local 2253 of the International Association of Fire Fighters. The proposed unit excluded the Fire Chief, Asst. Fire Chief, Deputy Fire Chief and, excluded by definition of public employee: call lieutenants and call fire fighters. Also excluded as confidential, the two positions of Administrative Assistant Clerk.

Counsel for the Durham-UNH Fire Department filed exceptions to the proposed unit and also moved for dismissal on the grounds that the unit was an inappropriate fragment of a larger unit of all operating staff members at the University. The System reiterated its long-standing position that the only

appropriate unit was one that embraced all Operating Staff members on the Durham Campus. Counsel argued, alternatively, that should the petition be granted, the captains should be excluded as supervisory and confidential employees under the Act.

Hearing was held on April 15, 1987 at which time the "Motion for Dismissal" was taken under advisement. Evidence and testimony continued at the April 22, 1987 hearing in the Board's office in Concord.

FINDINGS OF FACT


1. Petition filed by Local 2253, IAFF, met the requirements of RSA-273-A:10(a) in that at least thirty (30) percent of the employees signed individual signature cards, evidence of their desire to be represented in collective bargaining by Local 2253.
2. All employees of the Durham-UNH Fire Department share a community of interest in that they receive the same or similar wages; work the same number of hours; and, enjoy the same conditions of employment. They are all employed in the same historic craft; function within a single organizational unit; and, evidenced a very strong self-felt community of interest for the purposes of organizing under the collective bargaining statute.
3. Evidence further showed that a substantial difference exists between employees of the Durham-UNH Fire Department and other operating staff personnel at the University; i.e., grievance process appeal to final and binding decision rests with the Board of Fire Commissioners, as opposed to appeal of other operating staff to the Board of Trustees of the University; the Fire Department is a leased facility by the Town of Durham and the firefighters the only employees working out of that facility with limited contact with other University operating staff. The firefighters also work a longer workweek -- 42 hours per week and are not paid for shift differentials.
4. The Executive Head of the Fire Department is the Board of Fire Commissioners with direct supervision provided by the Fire Chief; University personnel are under the jurisdiction of the Board of Trustees and the Chancellor.
5. Although there is no question that the firefighters are University employees, working under the same personnel policies, they function like all other departments in any municipality, under the Department's own rules and regulations.
6. The University is unique in the funding for the operations of the Durham-UNH Fire Department in that they must follow a separate budget process with the Town of Durham appropriating one-third and the University two-thirds of the funds necessary for the operations of the Department.
7. CAPTAINS: Captains spend the majority of their time working alongside and performing the same duties as that of firefighters; they work under the same rules and departmental policy; and, although the captains do evaluate firefighters and recommend actions, their recommendations are not key to their adoption.
8. Captains have limited supervisory authority over firefighters involving significant discretion or independent judgment and that authority and supervision is not substantial enough to merit exclusion from the proposed unit.

9. No strong evidence was presented that captains would of necessity have access to information subject to use by the employer in collective bargaining or that they were in a capacity to formulate, determine or effectuate management policies.
10. As in the case of PPOM, the Board finds that the proposed unit is the appropriate unit and grants the petition filed by Local 2253, IAFF.
11. As is PPOM, however, this "decision is not to be read to indicate that every group of employees who perceive a community of interest, or wish to have an election as a distinct group apart from a previously established larger group, may do so. It is confined to its facts and circumstances. The Board will continue to guard against fracturing units and the resulting inefficiencies which can result."

DECISION AND ORDER

A unit is hereby created composed of captains and firefighters of the Durham-UNH Fire Department, all of whom are full-time employees of the Department.

An election to be held as expeditiously as possibly, by PELRB, in accordance with the requirements of RSA 273-A and the Board's Rules and Regulations.



JACK BUCKLEY, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 23rd day of June, 1987.

By unanimous vote. Chairman Jack Buckley presiding; members Seymour Osman and James C. Anderson present and voting. Also present, Executive Director Evelyn C. LeBrun.