

NH Supreme Court reversed  
this decision on September 15,  
1993, Slip Op. No. 92-395.



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

TEAMSTERS, LOCAL 633 OF NEW HAMPSHIRE	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. M-0647
	:	
TOWN OF WEARE	:	DECISION NO. 92-57
	:	
Respondent	:	
	:	

APPEARANCES

Representing Teamsters, Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

Representing Town of Weare:

Robert R. Tawney, Chief Negotiator

Also appearing:

Joseph A. Kelley, Town of Weare  
William G. Herman, Town of Weare  
Merrill Shepard, Town of Weare

BACKGROUND

On April 11, 1991, Teamsters Local 633 of New Hampshire filed a Petition for Certification for the following employees of the Town of Weare, namely secretaries (6), bookkeeper (1), assessing clerk (1), collection's clerk (1), police officers (2), deputy town clerk/tax collector (1). That Petition was heard by a hearing officer on July 29, 1991 with a decision issued on September 30, 1991 (Decision No. 91-75). That decision established a bargaining unit of "all regular full-time and regular part-time employees of the Town of Weare; namely, secretaries [5], bookkeeper [1], assessing clerk [1], collections clerk [1], police officers [1], and deputy town clerk/tax collector," excluding the Chief of Police and the secretary to the Town Administrator, under RSA 273-A:8 II

and RSA 273-A:1 IX, respectively. By letter of October 14, 1991, the Selectmen of the Town of Weare appealed the decision of the hearing officer and sought reconsideration by the Board (PELRB). The PELRB granted that request after which this matter was scheduled for and heard by the Board on March 19, 1992.

The one issue raised by the Town on rehearing before the PELRB was the placement of the police officer position in the bargaining unit. [It should be noted that, while the Town employs part-time police officers, they were not part of the original petition or under consideration in these proceedings.] The Town urged that the police officer position be excluded from the bargaining unit because it is the only position in the unit which: (1) requires state certification, (2) has a residency requirement, (3) has a paid lunch period, (4) has a uniform allowance, (5) requires shift work, (6) has mandatory membership in the New Hampshire Retirement System, (7) imposes a "dress code," (8) requires annual re-training, (9) imposes associational standards, and (10) involves off-site (out of building) work locations. Hiring practices are also allegedly different with the selectmen appointing police officers and the town administrator hiring other employees in the bargaining unit. Finally, citing the PELRB's decision in Town of Plymouth Municipal Employees (Decision No. 81-24, August 11, 1981), the Town said "the combination of public safety employees...with other municipal employees in one bargaining unit would create real potential for a division of loyalties which could adversely affect the efficient governmental operations."

The union sought affirmance of the hearing officer's decision (Decision No. 91-75) noting that the exclusion of the police officer position would bring the total unit to less than the minimum ten (10) employees required under RSA 273-A:8 I. It also argued that two more full time police officers are scheduled to be hired on or after July of this year. It characterized the Town's objections as involving an alleged lack of community of interest which has been either rejected or counterbalanced when police officers have been placed in bargaining units with non-police employees, e.g., North Hampton (Decision No. 91-59, September 11, 1991, with laborers, controller, secretary, health officer, building inspector, deputy town clerk and others), Durham, (Decision No. 91-78, October 3, 1991, captain with non-police mid-managers), Hudson (Decision No. 91-28, May 16, 1991, police captains, lieutenants and records manager with non-police employees), Carroll County Sheriff's Department, (by agreement, July 12, 1991, deputies and dispatchers in same unit), Plaistow Police Association (by agreement, October 18, 1989, patrolmen and sergeants in unit with dispatchers and secretaries-not sworn officers), and Town of Lincoln [Police and Communications Center Employees-AFSCME Local 3657] (Decision No. 91-39, June 18, 1991 where "PELRB has consistently allowed employees employed in different crafts to join together to form a unit if they meet

certain other requirements under the law.")

When we look to the requirements of RSA 273-A:8 and the need to find a community of interest, it becomes apparent that that community of interest may manifest itself by conditions of employment, by workable negotiations, by craft or profession, by functioning in the same organizational unit, or by other criteria. Unlike Plymouth, supra, which involved "approximately 25 employees," the exclusion of even one position from this bargaining unit will deprive all other employees from collective bargaining rights under RSA 273-A. Further, Plymouth is some ten years older than the trends represented by the cases referenced in the immediately preceding paragraph.

It goes without question that all the petitioned for employees work for and are paid by the Town. The fruits of their labors inure to the benefit of the Town. Testimony established that the Town's personnel policy pertained to all employees with a supplement or additional section which specifically pertains to the police department. For practical purposes, all petitioned-for employees work in or report to the same location. To say that police officers are required to work off-site and should be excluded would be equivalent to saying the assessor should also be excluded because he is required to leave the building to view and evaluate properties. Given the weight and trend of cases cited two paragraphs earlier, we can find no reason to reverse the hearing officer's decision of September 30, 1991.

There is hereby established a bargaining unit consisting of all regular full-time and all regular part-time secretaries (5), bookkeeper (1), assessing clerk (1), collections clerk (1), police officers (presently 1), and deputy town clerk/tax collector (1). EXCLUDED are the Chief of Police and the secretary to the Town Administrator.

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

So ordered.

Signed this 26th day of March, 1992.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.