Sept. 13, 1977

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

City of Concord, New Hampshire )
)
and )
)
American Federation of State, )
County and Municipal Employees, )
Local 1580 )

CASE NO. A-0417:2

77-26

DECISION IN REGARD TO REQUEST
OF PARTIES FOR DECLARATORY JUDGMENT

Appearances: City of Concord, New Hampshire - Paul F. Cavanaugh, City Solicitor

American Federation of State, County and Municipal Employees, Local 1580 - Mr. McDonough

DECISION:

The Board held a hearing on August 30, 1977 concerning the request for a declaratory judgment brought by the City and the Union under the provisions of the law allowing such declaratory judgment actions, R.S.A. 541-A:8; Board Rule 8.1.

Basically, the question in the matter is whether the City of Concord must negotiate with the American Federation of State, County and Municipal Employees, Local 1580, concerning the contract and terms of the contract for all employees in certain departments of the City or only those employees who are members of the Union, the language of the contract in existence at the passage of the statute reading "The City of Concord recognizes the Union as the designated representative of the employees who are members of said Union in the Public Works Department and Recreation and Parks Department for the purpose of collective

bargaining with respect to wages, hours and working conditions and other conditions of employment. As used herein, the term "employee" shall not include department heads, assistant department heads, division superintendents, supervisors, foremen on salary, or timekeepers."

The City states that because the certification under the "grandfather clause" of the statute, Laws of 1975, Chapter 490:3, mentioned the Union as a representative only of its own members, other employees in the Public Works Department and Recreation and Parks Department are not represented by the Union and, therefore, the Union cannot bargain on their behalf. The Union counters by saying that the unit established was the Public Works Department and Recreation and Parks Department with the excepted employees as mentioned in the recognition clause quoted above.

The Board is constrained to interpret the law and contract so as to make sense and enable collective bargaining to take place. Were the Board to accept the reasoning of the City in this case, the composition of the bargaining unit would change as individuals joined the Union or resigned from the Union, Union members took jobs or left them and the exact composition of the bargaining unit would never be known. In addition, the City would be in a position of bargaining with two groups of employees in the same departments, those who were members of the Union and those who were not.

The above untenable situation is in direct contrast with

the intention of the contract and the statute, including the grandfather clause. In this case, the statute requires that representatives of bargaining units prior to the enactment of the statute continue. This was established by the Supreme Court of New Hampshire in State Employees Association of New Hampshire, Inc. v. New Hampshire Public Employee Labor Relations Board, 116 N.H. 653 (November 9, 1976). Local 1580 of the American Federation of State, County and Municipal Employees, in fact, was the representative of said employees, the employees of the Public Works Department and Recreation and Parks Department prior to the statute and had entered into a contract. It is true that the language of that contract only mentions the members of the Union, but it is the manifest intent of the recognition clause to define the employees covered by the contract as those employees of the Public Works Department and the Recreation and Parks Department with certain exceptions enumerated in the recognition clause itself. As stated at the hearing, it would be unthinkable for the City to pay lower wages to the nonunion members since that might very well constitute an unfair labor practice and would have the effect of forcing or encouraging nonunion members to become union members, which is not the business of the employer. On the other hand, it is also unthinkable that the City would pay the Union members less than other employees in the same unit for the same reasons. According to testimony, the City, in fact, treated all employees in the departments the same and it was the Union which negotiated for the employees to the extent that negotiations took

place, whether those employees were Union members or not.

The only answer to the question posed by the parties which makes sense in light of the statute, practice, and contract, is that the Union represents all of the employees in the departments mentioned in the recognition clause, Public Works Department and Recreation and Parks Department, with the exceptions listed in the last sentence of the recognition clause. The City is therefore required by the statute to negotiate with the Union on behalf of all of those employees, union members and nonunion members alike.

The recognition granted the American Federation of State, County and Municipal Employees, Local 1580, as the exclusive representative of the designated unit was intended to and the Board finds did indeed grant recognition to the Union to represent all such employees as defined herein.

PUBLIC EMPLOYEE LABOR
RELATIONS BOARD

By: _____
Edward J. Haseltine
Chairman

Concurring members Moriarty, Allman and Cummings.

Board Member Anderson took no part in the hearing or decision of this case.

Signed this 13th day of September, 1977