



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

UNITED STEEL WORKERS OF AMERICA :
Complainant :

and :

CITY OF MANCHESTER WATER WORKS :
Respondent :

CASE NO. M-0545

DECISION NO. 81-59

APPEARANCES

Representing the Complainant, USWA:

Richard P. Wildes, Representative
Michael D. Roche, Eng. Aide III
Frank Freitas, Foreman MAW

Representing the Respondent, City of Manchester Water Works:

James A. Manning, Assistant City Solicitor
Frederick H. Elwell, Director Manchester Water Works
Wilbur L. Jenkins, City Personnel Director

BACKGROUND

By petition dated September 30, 1981, received by the New Hampshire Public Employee Labor Relations Board on that date, the United Steel Workers of America petitioned for an election, seeking certification as the exclusive bargaining representative of "clerks, technicians - service workers, pump station employees, working foremen and all other employees as determined by Public Employee Labor Relations Board in 1979" for the Manchester Water Works. In 1979, after extensive hearings, the Public Employee Labor Relations Board established a unit for the employees of the Manchester Water Works, in connection with a petition filed by the American Federation of State, County and Municipal Employees, AFL-CIO Local 298 under the provisions of RSA 273-A:8. Following the establishment of a unit, deemed by the Board to be "the appropriate bargaining unit", an election was scheduled and held in that unit, resulting in the rejection of the petitioning union. The union appealed that result based on various claims of improper actions by the City and, at the filing of the petition by the United

Steel Steel Workers of America, the New Hampshire Supreme Court had not decided the appeal from a denial of unfair labor practice charges by the Board. On November 16, 1981, the New Hampshire Supreme Court upheld the Board, removing any complicating factor on account of the previous election or claims surrounding it.

The City of Manchester objected to the petition filed by the United Steel Workers of America for several reasons. First, the City raised the issue of the appeal of the American Federation of State, County and Municipal Employees, which issue has been resolved by the Supreme Court. Second, the City alleged that the petition was untimely since it did not comply with the terms of the statute, RSA 273-A:11(b) which states, in part, "notwithstanding the foregoing, an election may be held not more than 180 nor less than 120 days prior to the budget submission date in the year such collective bargaining agreement shall expire." The City alleged that the pay and benefits provided to unaffiliated workers in Manchester was such an agreement which is set through December 31, 1981, resulting in the impossibility of holding an election within those prescribed time periods. Finally, the City raised the question of the propriety of the composition of the proposed unit, stating that the PELRB decision of 1979 had been in error in part because certain alleged supervisors were included, and was inappropriate since there had been certain changes in the functions of bargaining unit members since the former decision.

Hearing was held on the petition on November 19, 1981 at the PELRB offices in Concord, New Hampshire. At the hearing, the parties agreed that two members of the proposed bargaining unit properly should be excluded, namely the "Buyer" in the Finance Department of the Water Works and the "Accountant I", both employees being deemed to exercise supervisory authority sufficient to exclude them under the terms of the statute.

FINDINGS OF FACT AND RULINGS OF LAW

The Board has considered all evidence presented at the hearing. On the issue of timeliness of the petition, the Board finds that the petition has been timely filed. The allegations of the City that a pay and benefits package adopted by the Mayor and Aldermen of Manchester covering unaffiliated workers is the same as a collective bargaining agreement with a set term and expiration date is mistaken and the reliance by the City on the provisions of RSA 273-A:11(b) are in error since there is no such agreement nor is there any presently certified collective bargaining agent. Therefore, the provisions of Rule 1.2 of the Board and its practice control. That rule and the practice of the Board and requirements of statute provide that a petition for certification as exclusive representative of a bargaining unit having no certified representative "may be filed at any time."

On the question of proper unit composition, the Board would note that its responsibility under statute is to determine "the appropriate unit" not "an appropriate unit" as may be true under Federal or other state statutes. This Board conducted extensive hearings and considered carefully the question of the appropriate unit for the Manchester Water Works in 1979 and determined "the appropriate unit" for that employer/employee unit. That decision must stand unless there is agreement to the contrary supported by evidence which the Board find credible or unless one of the parties can point out intervening circumstances which have changed the characteristics of any of the employee groups or included employees or error in the original decision sufficient to include employees not previously included or exclude employees previously included.

The City raised several questions and assertions in connection with the elimination of employees from the proposed unit at hearing. After discussion, the parties agreed that two employees should in fact be excluded because their functions are sufficient supervisory in nature to qualify as supervisory employees. Therefore, the "Buyer" and the "Accountant I", previously included, were agreed to be excluded. The Board finds after considering the evidence and the agreement of the parties who are more familiar than the Board with the functions of these employees, that these exclusions are proper and these employees will be excluded from the bargaining unit.

The City asserted that there were certain other employees, namely the Utility Foreman III positions, the Engineering Technician I positions and the Inspector I positions which were supervisory in nature, all for similar reasons. The reasons asserted were that these individuals have a part in the selection process for filling vacancies, are part of committees to select individuals for employment, evaluate employees as part of the general evaluation program and submit forms to their superiors on which evaluation is partially based, and that they have certain powers to affect the discipline, suspension, and general supervision of other employees. The Board is unpersuaded by these arguments. First, to be deemed a supervisor, there must be substantial authority granted to the employee to hire, fire, or substantially influence the decisions concerning personnel matters. Mere participation in the process in some peripheral fashion without the authority to make personnel decisions or actually supervise other employees in regard to personnel decisions is not determinative. See generally Keene State College PAT Staff Association and University System of New Hampshire, Keene State College, PELRB decision 780007 and Manchester Professional Employees Association and City of Manchester Department of Highways, PELRB decision 79008 for a general discussion of the unit involved in this case and for the considerations used by the Board in establishing composition of units.

Because the "supervisory" activities of the individuals sought to be excluded are not considered by the Board to be of such a nature as to require their exclusion by statute or Board rule the Board declines to exclude any of the "Utility Foreman III", "Engineer Technician I" or "Inspector I" positions.

The City next seeks to exclude the entire work force at the Water Treatment Plant location and the "watershed" for several reasons. The City notes that the Water Treatment Plant and watershed are located several miles from the place of business of other departmental employees. The Water Treatment Plant personnel are, in many cases, technically trained and licensed by the State for complex operations and work. The function of the Water Treatment Plant is not identical to the function of the other Water Works activities. Finally, the City states that a work stoppage at the Water Treatment Plant would be more serious than a work stoppage at the other locations and of the other functions of the Water Works. Considering these assertions, the Board would note in regard to the last assertion that it is illegal for any public employees to strike and the Board will not presume that any public employee will engage in any such strike or work stoppage. Therefore, ability to sustain a work stoppage cannot be considered by this Board. The difference in location has not changed since 1979, the functions generally performed by the employees have not changed, the positions included and excluded on the basis of expertise have not been demonstrated to have changed from those used in the original determination in 1979, and, in addition, there was evidence at the hearing that there is some minimal exchange of workers between the Water Treatment Plant location and the main Water Works location

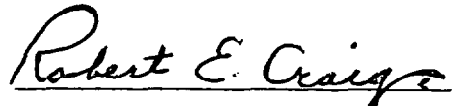
in Manchester. No evidence was shown at hearing that the Water Treatment Plant employees previously included in the unit are "professional employees" under the statute nor that they are sufficiently different from others to be excluded. In addition, the Board is required to consider the efficient operations of government and the inefficiency which results from the separation of units or creation of multiple units. The Board cannot find that there have been sufficient changes or factors brought to its attention to exclude the Water Works Department employees who work at the Water Treatment Plant or at the watershed for any reasons stated at hearing.

Finally, the watershed employees and Water Treatment Plant employees were shown to ultimately report to the same administration and Board of Commissioners as do the other employees of the Water Works and the Board finds that the employees included in the unit previously should be included in the same unit as other Water Works employees.

ORDER

1. The Board orders that the unit as stated in the petition be established as previously established in 1979 with the exception of the Buyer and Accountant I positions and including the other employees mentioned in the petition of the United Steel Workers of America.

2. The Board finds that there are no impediments to the holding of an election and orders that a pre-election conference and election be scheduled in the normal course under the rules of the Board.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 30th day of November, 1981

By unanimous vote, Chairman Craig presiding, members Osman and Grieco present and voting. Also present, Executive Director Evelyn C. LeBrun and Counsel Bradford E. Cook.