



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

FRANCIS J. BRENNAN, M.D.
PUBLIC PRACTICE PROFESSIONAL ASSOCIATION

Complainant

and

ERNEST J. TOWNSEND, DPA.
SUPERINTENDENT, N. H. HOSPITAL

Respondent

CASE NO. M-0533:1

DECISION NO. 82-28

Representing Francis J. Brennan, M.D.

Paula Rogers, Esquire
Luciano Vallillo, M.D., witness

Representing Ernest J. Townsend, DPA

James Townsend, Asst. Attorney General
John J. Ratoff, State Negotiator
Peter Minkow
Virginia Vogel

BACKGROUND

By petition dated October 22, 1981 and received by the PELRB on October 26, 1981, Francis J. Brennan (M.D.) charged that he was wrongly dismissed by Ernest J. Townsend, DPA, Superintendent of the New Hampshire Hospital, in that the dismissal was motivated in whole or in part by Dr. Brennan's activity on behalf of the Public Practice Professional Association, a unit certified but not at that time engaged in bargaining with the Hospital's managers, constituting a violation of RSA 273-A:5.

Respondent admits that a layoff notice was given to Dr. Brennan on October 16, 1981, effective October 30, 1981 but denies that any motivation other than fiscal exigency was present. Further, respondent claims that the activity of Dr. Brennan in or on the behalf of the Public Practice Professional Association (PPPA) was unknown to him at the time of the dismissal action, and further, that all seventeen of the physicians in the manpower pool subject to cutbacks were members of the PPPA and hence any action taken to dismiss anyone would involve a member of PPPA, and that membership in the Association does not "immunize" them from layoff

due to budget constraints. A hearing was held on these charges at the Board's office on March 11, 1982.

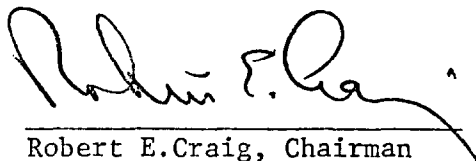
FINDINGS OF FACT AND RULINGS OF LAW

Testimony revealed that Dr. Brennan was known for his role in representing other physicians by at least some of those physicians. Dr. Brennan subsequently testified about the conditions of the hospital as he saw them and the remedies which he advocated as well as the steps that were taken by the hospital administration to alleviate the so-called "crisis", during the summer of 1981. Dr. Brennan was active in representing all, and then part, of the physician staff in their discussion with administrators over a staff cutback from seven to five physicians. One physician retired leaving six, including Brennan, with two who came later than Brennan to the hospital. Dr. Townsend testified that he asked for volunteers to staff nights and week-ends and one of the two physicians did volunteer and was thereby considered safe from dismissal. Townsend further testified that the remaining physician who was "junior" to Brennan was also more qualified in that he was "Board-certified", so the decision was made to dismiss Brennan instead of any other physician.

DECISION

Having considered all the evidence presented at the hearing, the Board finds:

1. The management of the State Hospital has acted in a reasonable manner in selecting particular physicians to be dismissed;
2. no pattern of action was demonstrated which would constitute discrimination against Dr. Brennan and thereby give rise to an unfair labor practice.
3. The unfair labor practice charge brought by Dr. Brennan against Superintendent Townsend is hereby dismissed.


Robert E. Craig, Chairman

Signed this 13th day of May, 1982.

By unanimous vote, Robert E. Craig presiding. Members Mayhew and Anderson present and voting. Also present, Executive Director Evelyn C. LeBrun.