

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO

and

TOWN OF DURHAM, NEW HAMPSHIRE
BOARD OF SELECTMEN

CASE NOS. A-0482 & A-0427:2

DECISION NO. 82-52

APPEARANCES

Representing the American Federation of State, County
and Municipal Employees, AFL-CIO:

James J. Barry, Jr., Esq., Counsel
James C. Anderson, Executive Director, Council #68, AFSCME

Representing the Town of Durham and Board of Selectmen:

Alan Edmund, Administrative Assistant
Thomas C. Dunnington, Jr., Esq., Counsel
Lawrence O'Connell, Chairman, Board of Selectmen
Norman W. Stiles, Selectman

BACKGROUND

The parties to this action are the Selectmen of the Town of Durham, New Hampshire, the employer, and the American Federation of State, County and Municipal Employees, the certified bargaining representative of certain employees of the Town of Durham. In July, 1981, the representative contacted the employer in writing requesting the initiation of bargaining for a contract, the terms of which, if agreed upon, were to be voted on by the town meeting in the spring of 1982. The budget submission date for the town of Durham is February 1, 1982. This action arises out of a complaint by the town which brought an unfair labor practice charge against the union for failure to negotiate and also arises out of the request by the representative for the appointment of a mediator under the terms of the statute.

Evidence at the hearing showed that no negotiation sessions were held between the parties until December 3, 1981, and that one session was held, the union having mailed its proposal prior to that meeting. There was apparently some strong language between the parties at the initial meeting but an additional meeting was scheduled for December 18, which meeting had to be cancelled because of a snowstorm. James Anderson, Executive Director of the Union, requested a mediator and one was appointed by the Public Employee Labor Relations Board at his request. The Town protested the appointment of a mediator stating that no good faith bargaining had taken place and that the appointment was premature. The Union refused to meet with the Town without the mediator, and

therefore no further bargaining sessions took place.

FINDINGS OF FACT AND RULINGS OF LAW

RSA 273-A:12, I, states:

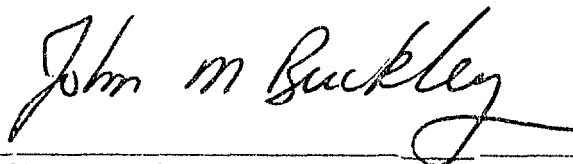
"Whenever the parties request the Board's assistance or have bargained to impasse, or if the parties have not reached agreement on a contract within sixty (60) days, or in the case of state employees, ninety (90) days, prior to the budget submission date, a neutral party chosen by the parties, or failing agreement, appointed by the Board, shall undertake to mediate the issues remaining in dispute..."

All meetings between the parties in this case were within sixty (60) days of the budget submission date and therefore since no agreement had been reached within such time, the certified bargaining representative was within its right to request a mediator. The failure of the Union to sit down with the Town to the appointment of a mediator, while understandable, since no meaningful negotiations had taken place between the parties, must be resolved in favor of the Union which was well within its rights in making the request for the mediator. Therefore, there is no merit to the unfair labor practice complaint.

The Town could be deemed to have waived its right to consultation concerning the identity and appointment of a mediator since it had copies of all requests and did not make alternative suggestions. However, since it believed that the point in the bargaining process at which a mediator was requested was inopportune and therefore did not participate in the selection, and since the statute favors agreement between the parties on the identity of a mediator, the Town should be given an opportunity to be involved in the process. This selection process must not, however, delay negotiations. Therefore, the Board issues the following order:

ORDER

1. The unfair labor practice complaint brought by the town of Durham Selectmen is hereby dismissed.
2. The parties shall submit to the Board within seven (7) days of the hearing (by July 8, 1982) an agreed-upon mediator or suggestions for the appointment of a mediator if no agreement can be reached, with the understanding that the mediator previously appointed may be selected by the parties. Failing such selection, the Board will appoint a mediator and, within seven (7) days following that selection (by July 15, 1982), the parties shall submit to the Board a list of dates for negotiation sessions.



JOHN M. BUCKLEY, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 15th day of July, 1982.

By unanimous vote. Alternate Chairman John M. Buckley presiding; members Russell F. Hilliard and Seymour Osman present and voting. Also present, Executive Director Evelyn C. LeBrun and Board Counsel Bradford E. Cook.