



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES (AFSCME)

v.

STATE OF NEW HAMPSHIRE and  
STATE EMPLOYEES' ASSOCIATION OF N.H. INC.

CASE NO. A-0484:1

DECISION NO. 82-63

#### APPEARANCES

##### REPRESENTING THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

James J. Barry, Jr., Esq., Counsel  
James C. Anderson, Executive Director

##### REPRESENTING THE STATE OF NEW HAMPSHIRE

James E. Townsend, Esq., Assistant Attorney General  
John J. Ratoff, State Negotiator

##### REPRESENTING STATE EMPLOYEES' ASSOCIATION OF N.H. INC.

Richard E. Molan, Esq., Assistant Executive Director  
Denis Parker, Executive Director

#### BACKGROUND

This is an unfair labor practice complaint and Petition for Cease and Desist Order brought by the American Federation of State, County and Municipal Employees, Council #68 against the State of New Hampshire and, specifically, the New Hampshire Department of Health and Welfare and the State Employees' Association of New Hampshire, Inc. (hereinafter SEA). AFSCME has filed the request petition for election to initiate the process to determine whether the employees in the New Hampshire State Department of Health and Welfare desire to continue to be represented by the State Employees' Association or wish to change representatives and be represented by the American Federation of State, County and Municipal Employees. The PELRB has not acted on this petition as of this date. This new Petition before the Board sought a Cease and Desist Order, ordering the State and SEA to stop denying access to the AFSCME representatives to the employees of the Department at various Department of Health and Welfare facilities. The Petition alleged that since a Petition has been filed seeking an election to determine bargaining representative, the AFSCME representatives have rights to

access in accordance with Public Employee Labor Relations Board Rules, specifically 3.3 (b) which provides certain rights to "Employee organizations listed on the ballot...." The State and SEA responded to the Petition with Motions to Dismiss based on certain technical grounds alleging deficiencies in the Petition and, alleging that the Petition failed to state a cause of action since the rights afforded under Rule 3.3 (b) arise only after a certificate of election has been issued by the Board and, therefore, in the absence of such a certificate of election, the Petition is premature.

At hearing, held August 27, 1982, the Board allowed amendment of the Petition to allege violation of certain statutory provisions and accepted an offer of proof from AFSCME. Beyond that, the issues before the Board concerned the legal issue alone.

#### FINDINGS OF FACT AND RULINGS OF LAW

The Board finds that on the evidence presented and agreed to by the parties, after the Petition for election was filed by AFSCME, the State allowed AFSCME representatives access to certain public areas at all Health and Welfare Department facilities including the entrance ways and public cafeterias. However, when requested to allow additional access and certain rights delineated in Board Rule 3.3 (b), the SEA objected to the request and the State denied access to facilities such as garages, non-public cafeterias and other areas. AFSCME does not dispute that it has been granted the right to have its representatives in the public areas but argues it should be allowed greater access (admitted at hearing, however, that the access should be less than the complete rights afforded by Rule 3.3. (b) until the certificate of election has issued) since to deny access greater than that already allowed denies fundamental rights to an organization which has already initiated the election process.

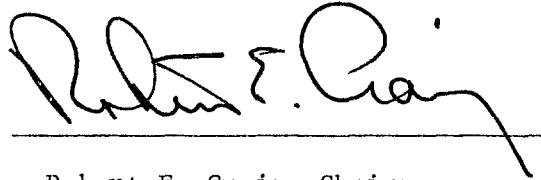
The State and SEA respond to the argument raised by AFSCME by stating that the rules of the Board are clear. The Board agrees with these arguments that rights afforded under Board rules arise only upon the issuance of a certificate of election which is a point in the election process after determination by the Board that cards supporting a Petition for Election are valid and other procedural steps have been taken as required by statute and rules. The Board recognizes as valid the State's argument that an employer will not be able to rely on any clear rules, as it has attempted to do, if the Board allows a separate category of rights to be afforded to an organization which has petitioned but has yet not received a certificate of election. It may be that the Board will wish in the future to formulate a rule allowing certain basic access to an organization in the posture of AFSCME in this case. However, since there is no rule and clear rules on which employers and labor organizations can rely should exist and since basic access has been allowed by the employer in this case, the Board declines to create special rules in this case.

The SEA properly recognizes that, notwithstanding the fact that there is a provision in the existing collective bargaining agreement denying access to any organization other than the SEA to certain facilities, after the certificate of election has issued, Board rules as to access will allow both contestants in the election the rights contained in Board rules.

However, because the Board agrees with the State and SEA that the rights sought by AFSCME in this case are sought prematurely, the Board issues the following order:

ORDER

1. Having found the Petition to request rights premature under the rules, the Petition of the American Federation of State, County and Municipal Employees is hereby dismissed.

A handwritten signature in black ink, appearing to read "Robert E. Craig", is written over a horizontal line.

Robert E. Craig, Chairman

Chairman Robert E. Craig presiding. Members Robert D. Steele, and Russell Verney present and voting. All concurred. Also present Executive Director, Evelyn C. LeBrun, and Board counsel, Bradford E. Cook.