



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 68, AFL-CIO

Complainant

vs.

TOWN OF WOLFEBORO

Respondent

CASE NO. A-0496:3

DECISION NO. 85-06

APPEARANCES

Representing American Federation of State, County and Municipal Employees

Gary H. Foster, Administrator, Council 68

Representing Town of Wolfeboro

Daniel D. Crean, Esq., Counsel

Also in Attendance

Peter Brewitt, Chairman, Board of Selectmen
W.E. Erickson, Selectman
Gary L. Krapp, Town Manager
James C. Anderson, AFSCME
George Elkins
Don Campbell
David Ridings
James Champagne
Barry Kimball

BACKGROUND

On October 9, 1984, AFSCME, Council 68 (union) as certified representative of certain employees of the Town of Wolfeboro filed an unfair labor practice charge against the Town of Wolfeboro (town). The Union alleged that the Town did violate RSA 273-A:5 I (a), (b), (e) in that the Town had not followed its own rules about posting and filling vacancies and then refused to discuss problems with the union representatives.

The union argued that the Town action constitutes "...interference with employees in the exercise of their rights, interfering in the administration of the employee organization and discriminating in the terms and conditions of employment". The union also argued that the Town cannot change the "conditions of employment" before negotiations have been completed.

The Town of Wolfeboro (town) denied any breach of RSA 273-A and argued that the union had no standing to complain since no collective bargaining agreement exists; indeed the Public Employee Labor Relations Board has no jurisdiction since the matters raised by the union are not relevant to RSA 273-A at all, unless included in a collective bargaining agreement, which does not exist here. In addition, the Town urged dismissal also on the grounds that the Town's administrative remedy for such grievances has not been used.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on November 13, 1984, with all parties represented.

FINDINGS OF FACT

- (1) The Town's Rules and Policies, "Section 1. - Employment, c. Methods of Filling Vacancies", indicates that vacancies will be filled in the following order:
 - (1) from within department; (2) from Town employee at large; (3) through public notice. This section further states that if the vacancy is not filled by present department personnel, the vacancy "...will be posted on the bulletin boards of every other town department (sic) for a minimum of five working days".
- (2) Apparently a notice of a job vacancy was "pulled off" at least one bulletin board, but this was not done by order of Town officials.
- (3) No "grievance" was filed as provided for by Town policy (Section 13).
- (4) The Town was preparing a response to the union when the union filed this unfair labor charge and the union was aware of this.

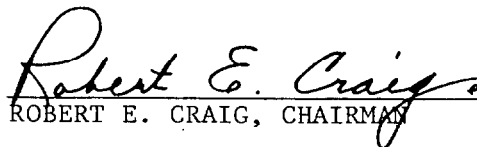
RULINGS OF LAW

- (1) The failure, if that was what it was, to post would be grounds for a grievance not an unfair labor practice charge. The Public Employee Labor Relations Board cannot agree that "a violation of a policy constitutes a changing of policy" without a firm foundation of repeated and significant violations. No such record was established here. Indeed the Town was not shown to be guilty at all!

- (2) Since there were no changes in the "conditions of employment" and since the Town does have a grievance procedure and since the Town had not refused to discuss with the union a possible grievance, (and there is no alternative in a contract in place yet), there has been no violation of the union's protected rights as exclusive representative of the bargaining unit's employees.

DECISION AND ORDER

Failing to find any violation of RSA 273-A, the charge is ordered, and hereby is, dismissed.


ROBERT E. CRAIG, CHAIRMAN

Signed this 18th day of January 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Roulx and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.