



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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JAMES C. FALCONER

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Complainant

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Case No. M-0575:1

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v.

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Decision No. 85-64

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SEABROOK EMPLOYEES ASSOCIATION

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Respondent

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#### APPEARANCES

Representative for Complainant

James C. Falconer

Representative for Respondent

J. Joseph McKittrick, Esq.

Also in Attendance

Cora E. Stockbridge

Robert R. Tawney

#### BACKGROUND

James C. Falconer, a selectman in the town of Seabrook filed unfair labor practice charges against the Seabrook Employees Association on April 19, 1985. Mr. Falconer charged that on Thursday, March 28, 1985 at a meeting of the Seabrook Employees Association the members voted by a majority of one to adopt the Bylaws which excluded James C. Falconer as a member of the union. Two bargaining units were set up by the PELRB on January 3, 1985, one to consist of supervisory personnel and the other to consist of other employees of the town of Seabrook. Mr. Falconer sought to become a member of the supervisory unit since he is also serving as part-time welfare officer for the town which position is included in the Unit B bargaining unit authorized by the PELRB.

On February 26, 1985 an election was held by secret ballot and the Seabrook Employees Association was chosen to represent Unit B; the vote was unanimous. Subsequent to the election which selected the Seabrook Employees Association as the exclusive representative of Unit B a meeting was called, the notice of which was sent out on March 21, 1985. The notice was for a meeting to be held on March 28th. Mr. Falconer alleged that the notice of the meeting did not contain a notice of action to be taken on the Bylaws of the Seabrook Employees Association with reference to action to be taken to exclude any member who was a part of the bargaining unit. Mr. Falconer further alleged that on March 27, 1985 he received a telephone call from Mrs. Cora Stockbridge asking him not to attend the meeting the following evening. Mr. Falconer alleged that this is an act of

coercion and interference on the part of Mrs. Stockbridge and an abuse of her office as a member of the Seabrook Employees Association and interfering with Mr. Falconer's rights under RSA 273-A.

At the meeting of March 28th which Mr. Falconer did attend discussion on two separate votes was held; one including the entire Bylaws, the second including the language excluding Mr. Falconer as a selectman of the town. Mr. Falconer made an effort to join the Seabrook Employees Association but his dues were declined as such although accepted as a gift.

Mr. Falconer asked that the PELRB issue a Cease and Desist Order against the Seabrook Employees Association pending a hearing on the merits and he also asked for a "Quo Warranto" writ against the Seabrook Employees Association regarding their election process and their refusal to include him as a member and further he asked for an order restoring his status in the Seabrook Employees Association.

The Seabrook Employees Association, through its attorney J. Joseph McKittrick of Rye, New Hampshire, denied that they had committed any unfair labor practice and agreed that the meeting was held (except on March 26th and not March 28th). The association admits that Bylaws were introduced and discussed at lengths and that James C. Falconer was asked not to attend the meeting. The association admits that Mr. Falconer was not given a copy of the Bylaws although he was allowed to look at the copies possessed by other members of the association. The association admits there was a great deal of discussion about the passage of the Bylaws and that Mr. Falconer participated freely, without limitation, in this discussion. The association further admits that the question of Bylaws was divided into two separate issues so that the issue of excluding selectmen was voted on separately and by secret ballot. Mr. Falconer was permitted to vote on the Bylaws in general and on the issue of excluding selectmen. The association admits that the vote to exclude selectmen was carried by a majority of one vote.

The association denies that the notification of the meeting was in any way void with respect to its contents. The association admits that Mr. Falconer was asked not to attend the meeting by Cora Stockbridge acting as representative for the Seabrook Employees Association.

The respondent requested that the complaint be dismissed and argued that certain of the remedies requested by Mr. Falconer were not within the powers of this board to grant and that basically the union has the freedom to regulate its legitimate and internal affairs without the interference of any state or national organization.

The association further argues that the union may enforce its properly adopted rules that reflect a legitimate union interest provided that such rules impair no labor law policy and are reasonably informed. Further, the association argues that the unions action excluding James C. Falconer from active membership in no way excluded him or attempted to exclude him from the work force nor did it attempt to exclude or modify his seniority status. The association further argues that New Hampshire RSA 273-A does not provide for the regulation of the internal affairs of a union in a fashion similar to the National Labor Relations Act. The association further states that Mr. Falconer's complaint did not cite and cannot cite a specific violation of RSA 273-A:5 as is required by the provision of the PELRB regulations 304.01 dealing with unfair labor practice charges. The association further argues that the PELRB is without jurisdiction to regulate the internal affairs of a union and that the complaint contained no allegation alleging a violation or interference with the employees employment status.

A hearing was held at the PELRB office in Concord, New Hampshire on July 25, 1985 with all parties represented.

#### FINDINGS OF FACT

During the course of the hearing the following factual situation was found to be the case:

1. Mr. Falconer is currently an elected selectman of the town of Seabrook, New Hampshire and also serves as part-time welfare officer for the town.
2. The Board of Selectmen of the town of Seabrook is the employer for the members of the Seabrook Employees Association.
3. The position of welfare officer is included in the bargaining unit of which the Seabrook Employees Association is the exclusive bargaining agent. Selectman Falconer offered to pay dues and join the Seabrook Employees Association but his dues was refused although it was accepted as a contribution.
4. The subsequent meeting of the Seabrook Employees Association Bylaws were adopted by the association including an amendment which excludes any member who is an employer in this case any selectperson. This membership exclusion was not found to be based on anything other than the fact that selectmen are employers of the members of the bargaining unit.
5. Mr. Falconer takes an active role in the Board of Selectmen chairing at times and participating in at other times disciplinary hearings involving members of the Seabrook Employees Association, and has in the past refused to absent himself from such hearings.
6. The union, while denying Mr. Falconer membership in its organization has not indicated it would fail to represent him as a member of the bargaining unit, indeed they have explicitly stated that they will in fact represent him as well as all other members of the bargaining unit which is their duty under the law.

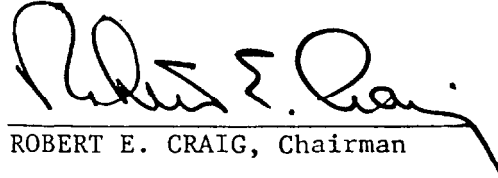
#### RULINGS OF LAW

In the first place the discrimination charge which is brought by Mr. Falconer based on a reading of 273-A:5, II, (c) is a misreading of the law and does not apply in this case since that section of the law refers to a prohibition against the employer to discriminate against any employee who has been denied membership in the union for any reason other than failure to pay membership dues. We hereby rule that section of RSA 273-A is inapplicable to this case.

Secondly, it is the judgment of this board that Mr. Falconer does not have an inherent right to demand union membership and that the criterion for union membership are up to the union to decide, assuming they do not conflict with the law, and that the union (as it has been agreed) must represent Mr. Falconer as well as all other members of the bargaining unit whether or not they are members of the union.

DECISION AND ORDER

It is the decision of this board that the Seabrook Employees Association has not committed an unfair labor practice in barring a selectman from membership in their association and, therefore, this case is ordered and is hereby dismissed.



ROBERT E. CRAIG, Chairman

Signed this 22nd day of August, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard Roulx, Seymour Osman and James Anderson present and voting.