



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 93, LOCAL 572

Petitioner

v.

CITY OF DOVER AND REYNOLD PERRY IN HIS
CAPACITY AS CITY MANAGER

Respondent

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CASE NO. A-0406:7

DECISION: 86-61

APPEARANCES

Representing the American Federation of State, County and Municipal Employees,
Council 93, Local 572

James C. Anderson, Field Representative

Representing the City of Dover, Reynold Perry, in his capacity as City Manager

Scott E. Woodman, Esq., City Attorney

Also Appearing:

Reynold Perry, City Manager
Pierre R. Bouchard, Public Works Director
Michael T. White, Local 572 Treasurer
Robert L. Keay, Maintenance Mechanic

BACKGROUND

The American Federation of State, County and Municipal Employees, Council 93, Local 572 ("The Union") filed improper practice charges against the City of Dover, N.H. ("The City"), on April 7, 1986, alleging the City had violated RSA 573-A:5, I, (i) (to make regulation or a rule invalidating an agreement).

Specifically, the Union charges that the City made unilateral changes in certain job descriptions, which descriptions are contained in the collective bargaining agreement, and subsequently, failed to bargain with the Union over these changes.

The City responded to the charge(s) by admitting that certain changes in job descriptions were made but that they were management prerogatives under the Administrative Code of the Dover, authorized by the City Charter

and pertinent state statute, and exempted from negotiation as a matter of "managerial policy within the exclusive prerogative of the public employer" pursuant to RSA 573-A:1, XI. The City further pointed out that the matter had been grieved under the contract but not pursued by the Union to the final step, arbitration, as provided for in the contract and that therefore, the Union had failed to exhaust its administrative remedies.

A hearing was held at PELRB office in Concord, N. H. on August 28, 1986 with all parties represented.

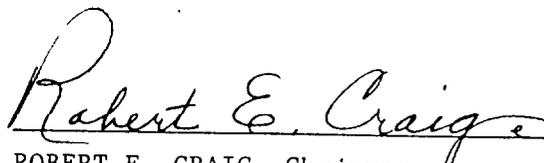
FINDING OF FACT

1. The City moved to dismiss the unfair labor practice complaint on the grounds that it was the same as the grievance, i.e., job description, changes relating to the contract, filed October 16, 1985 and not referred to arbitration. Motion was taken under advisement.
2. The Union agreed at the hearing that it had no right to demand negotiations about the job descriptions and hence did not pursue the grievance to final arbitration on this point but rather comes to the PELRB for a decision on the question of failure to negotiate the impact of the new job descriptions.
3. AFSCME, Local 572, is the exclusive representative of the affected workers, operating under a collective bargaining agreement in force from July 1, 1985 to June 30, 1986.
4. During a meeting, February 26, with City Manager Perry, Union Leaders began to believe their grievance was not valid and also accepted Mgr. Perry's assurance that he would "work out" problems of the impact of these changes. The Union subsequently accepted Perry's rejection of their grievance (March 20, 1986) and took it no further.
5. Neither the Union nor the City made it clear at the Feb. 26 meeting, that negotiations for "impact" should start immediately. On March 20, 1986, City Manager Perry, as part of grievance procedure, wrote to Union Shop Steward, Paquette, denying the grievance and suggesting that since negotiations were to start soon on a new contract, then would be the best time to discuss concerns over the "impact" of job description changes.
6. The City established that the changes in job descriptions was a process of updating the personnel descriptions of what people were actually doing as well as what should be doing. The new job descriptions contained some significant new changes and were implemented in September-October of 1985.
7. The City Manager testified that his recollection of a meeting on March 7, 1986 was about the requirement to negotiate the job descriptions, which he disagreed with, and only later about any "impact" which he was coming to believe should be negotiated.

DECISION AND ORDER

1. The PELRB usually insists that grievance procedures be exhausted prior to coming to us but in this case, since the Union accepts that their grievance is without merit, we shall not grant the motion to dismiss on failure to exhaust administrative remedies.
2. The City Manager's letter of March 20, 1986 clearly constitutes a willingness to negotiate the "impact" of the changes in job descriptions, preferably at some future date.
3. Both the City and the Union have failed to communicate clearly with each other about "impact" negotiations and this Board cannot see a violation of RSA 573-A in this. We hasten to reiterate, however, that changes by management prerogative which impact on working conditions must be negotiated at the time of the changes, not later.

For the reasons stated, the PELRB hereby dismisses the unfair labor complaint against the City of Dover.


ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 10th day of October, 1986.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director Evelyn C. LeBrun