



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEABROOK EMPLOYEES ASSOCIATION *

*

Complainant *

*

CASE NO. M-0575:4

*

v.

*

DECISION NO. 87-04

TOWN OF SEABROOK *

*

Respondent *

APPEARANCES

Representing Seabrook Employees Association

Cora Stockbridge

Representing Town of Seabrook

Gary Holmes, Esq.

BACKGROUND

The Seabrook Employees Association (Association) filed a complaint against the Town of Seabrook (Town) on August 17, 1986 charging unfair labor practices in violation of RSA 273-A:5, I (a), (e).

The Association alleges that the Town has "...implemented substantial changes in working conditions..." (complaint) by eliminating the separate position of Health Officer for the Town, and terminating the then existing Health Officer, Mr. Walter I. Randall, and then "...combining the position of Health Officer with that of Building Inspector" (complaint) and appointing the Building Inspector, Mr. Robert S. Moore, to the full-time position of "Building Inspector/Health Officer". Subsequently the Town rescinded the joint position and appointed Mr. Moore as Health Officer (he was already the Building Inspector). Mr. Randall subsequently filed a grievance over his termination and the Town and the Association met for a hearing on April 22, 1986. The nature of this hearing is in dispute. The Association alleges the Town violated the Town's Personnel Policy by denying the hearing was a "just cause" hearing, and should reinstate Randall with back pay. Both the positions of Health Officer and Building Inspector are certified as members of Unit B of the Town employees, represented by the Association.

The Town denies any breach of RSA 273-A. The Town alleges that the Health Officer is "appointed" by Director of the Division of Public Health Services on the recommendation of the Board of Selectmen. The Town admits that they advised Randall that at the end of his term (March, 1986) the Selectmen would be recommending that the Building Inspector and Health

Officer positions be combined and that they would recommend Robert S. Moore for the Health Officer position (he was already the Building Inspector).

The Town further admits that on February 28, 1986 the Board of Selectmen voted to rescind previous action combining the two positions and voted to return the Health Officer position as part-time "...under the same terms and conditions as previously established" (answer).

The Town further admits that Randall filed a grievance and a hearing was held (April 22, 1986). The Town alleges, however, that the Town did discuss the reasons for the non-recommendation of Mr. Randall, including job performance and the Selectmen's decision to combine two part-time jobs into one full-time position. The Town alleges that the Association's attorney was given time to prepare a rebuttal and that such was filed on June 30, 1986. The Town admits it took final action on the grievance on July 17, 1986, upholding their action of nominating another person as Health Officer. The Town claims that "full procedural due process has been given to Mr. Randall in accordance with the Town's grievance procedure under the Personnel Policy" (answer).

The Town further argues that PELRB should dismiss this case because it asks for a review of the grievance process, something which PELRB refused to do in a previous Seabrook Case (M-0575:3, Decision #86-22).

A hearing was held at the Town of Seabrook Offices on November 11, 1986 with all parties represented.

FINDINGS OF FACT

Bargaining units A and B of the employees of the Town of Seabrook were certified in February of 1985. No Collective Bargaining Agreement has been agreed to yet and negotiations continue with the Seabrook Employees Association representing both units.

Walter I. Randall was serving as the Town's Health Officer, a part-time position, when on February 19, 1986 he was notified by the Town that his term would expire on February 28, 1986 and that he would not be renominated. The Board of Selectmen decided to combine the two part-time positions of Health Officer and Building Inspector into one. On February 24, 1986 Walter I. Randall filed a grievance over his non-renomination and requested a public hearing (State of N.H. notice to Town states Health Officer term expires 2/28/86).

On March 21, 1986 Attorney McKittrick, representing the Seabrook Employees Association, wrote to Attorney Holmes, representing the Town (See Town Exhibit #2) about the Randall grievance asking for time to prepare, that March 28 was "premature". In this letter Mr. McKittrick raises two issues: (1) If Mr. Randall's "dismissal" was proper and asking for a "just cause" hearing and (2) if the position of Health Officer vacancy had been posted properly.

On April 11, 1986, Mr. McKittrick acknowledged the scheduled hearing for April 22, 1986 and referred to this as a "for cause" hearing (see Town #4).

On April 22, 1986 a hearing was held on Mr. Randall's grievance. Those present included the Board of Selectmen, the Town's attorney (Holmes), Seabrook Employees Association President Cora Stockbridge, Randall and Randall's attorney (McKittrick).

Minutes of the executive session of April 22, 1986 reveal that reasons were given for not renominating Mr. Randall and that these were of two types: "Administrative", meaning the Selectmen's decision to combine the two part-time jobs and reasons for so doing, and "Job Performance", meaning dissatisfaction with certain aspects of the way Randall was/was not performing as Health Officer. Mr. McKittrick suggested an adjournment so that the Association could prepare a response to the Town's statement and the group agreed and the Association left (the Selectmen turned to other business).

Subsequent to the hearing, on June 30, 1986, Mr. McKittrick wrote to Mr. Holmes defending Mr. Randall, (see Town #6) making several points:

- a. The Town may be denying the April 22, 1986 hearing was a "just cause" hearing but merely an opportunity to hear the reasons for Randall's non-recommendation;
- b. The Town's desire to combine the two positions, or have one person occupy both, may violate Home Rule Charter;
- c. On February 6, 1985 the Selectmen praised Mr. Randall's performance;
- d. On at least three other occasions the Selectmen indicated the complexity of the job Mr. Randall faced and advised that Attorney Holmes would have to be brought in to help; (subsequent delays were caused by this)
- e. That Mr. Randall had agreed to be available, in the office, on Wednesdays from 9 a.m. to 12 noon;
- f. Denying that a State employee had complained about Mr. Randall's availability.

Mr. McKittrick's letter also asks that the Selectmen "...further consider its position regarding Mr. Randall's continued employment as a part-time health officer..." (Town #6).

On July 17, 1986 the Selectmen reaffirmed their action and denied Mr. Randall's grievance.

RULINGS OF LAW

- a. Mr. Randall's "appointment" makes him a town employee. His position is listed as part of unit B of the Town of Seabrook and we must consider him as such until the certification is challenged.
- b. Mr. Randall does not have a grievance procedure under a collective bargaining agreement as yet and must therefore abide by the Town's grievance procedure (See Seabrook Employees Association v. Seabrook, Decision 86-22).
- c. The hearing afforded Mr. Randall on April 22, 1986, was for all intents and purposes a "for cause" hearing. Mr. Randall was given the opportunity to rebut the reasons given and did so later through Mr. McKittrick. He did not seek, nor was he granted any additional opportunity to speak directly to the Board of Selectmen.

- d. The Board of Selectmen are within their managerial rights to combine positions and/or terminate employees without negotiation, so long as these actions do not violate RSA 273-A. In this case they do not, since no refusal to negotiate about changed circumstances was even raised.
- e. The denial of Mr. Randall's grievance, as well the other actions of the Selectmen do not constitute an unfair labor practice under RSA 273-A.

DECISION

Complaint is hereby dismissed.

ROBERT E. CRAIG, CHAIRMAN

Signed this 27th day of January, 1987.

By unanimous vote. Chairman Robert E. Craig presiding, members James Anderson, Richard Molan, Seymour Osman and Richard Roulx present and voting. Also present Evelyn C. LeBrun, Executive Director.