



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER POLICE DEPARTMENT/
DETECTIVE WILLIAM MALSURY

Petitioner

v.

DOVER POLICE ASSOCIATION,
I.B.P.O. LOCAL 466

Respondent

CASE NO. P-0747:3

DECISION NO. 97-025

APPEARANCES

Representing Dover Police Department:

Detective William Malsbury, Dover Police Department

Representing Dover Police Association, Local 466:

Peter C. Phillips, Esq. I.B.P.O.

Also appearing:

Donny Daley, National Representative, I.B.P.O.
John A. Encarnacao, Dover Police Association
Michael J. Duran, Dover Police Association
Chief William Fenniman, City of Dover

BACKGROUND

Detective William T. Malsbury of the Dover Police Department filed a petition for the certification of a bargaining unit on November 6, 1996. He seeks a representation election to replace the International Brotherhood of Police Officers (I.B.P.O.), with the Dover Police Association, the original independent bargaining agent certified to represent police department employees. An answer was received from the I.B.P.O. on November 27, 1996. A

hearing on the matter was held before the undersigned hearing officer on January 10, 1997. The record remained open until January 22, 1997, for the receipt of certain evidence.

FINDINGS OF FACT

1. The Dover Police Department employs police officers and other personnel in its operations and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. According to Chief William Fenniman, the Dover Police Association (DPA) came into existence in 1974. The Association was recognized as the exclusive representative of all bargaining unit employees on June 7, 1977.
3. The Dover Police Association, following its by-laws, voted to affiliate with the International Brotherhood of Police Officers (I.B.P.O.) on March 8, 1993, according to I.B.P.O. National Representative Kenneth Boudrow's letter received March 17, 1993. Dover Police Association, Local 466, I.B.P.O., was certified as exclusive representative on March 23, 1993. Notice is taken of the contents of the files relating to the affiliation and certification efforts.
4. A voting list was approved, dated and initialed by representatives of the employer and the Dover Police Association on February 17, 1993, in preparation for an election scheduled for March 15, 1993. The excelsior list showed fifty-two eligible voters. The unit originally petitioned for called for fifty members. The file document, entitled Dover Police Association Dues, January, 1993 Deductions, has fifty-two names entered with most paying \$14 but with thirteen paying lesser amounts.
5. Documents in the file show that, by March 1, 1993, this agency learned that the petition for certification was untimely under Rule Pub 301.02 and dismissal was required. An affiliation procedure under Rule Pub 301.05 was found to be in order. The procedure is not subject to a time bar. Statements by the parties confirm that the procedure of affiliation was followed in the alternative to the usual certification process (Rule Pub 301.02). The internal rules of the Dover Police Association guided the process. Said rules are not found in the file.

6. John A. Encarnacao has been a Dover police officer for three years and held office in the Dover Police Association in September, 1996, when a vote on whether or not to retain I.B.P.O. affiliation was announced to occur on October 15, 1996. Membership in the DPA had decreased. Only dues paying members of the DPA were allowed to vote. It was announced that membership cards were available for those who wished to join prior to the vote and eighteen employees began the process in order to vote. The eighteen were prevented from joining for lack of a quorum required by DPA by-laws to ratify the new memberships. Much testimony was taken as to the circumstances which led to the lack of the quorum and whether or not DPA by-laws were followed.
7. The bargaining unit consisted of forty-eight positions during September and October, 1996. Of those holding bargaining unit positions, twenty-eight were dues paying members. Eighteen voted in the October election conducted by the Dover Police Association. Eleven voted to retain affiliation and seven voted to change affiliation. As stated in the petition submitted by William Malsbury, a total of thirty-one bargaining unit members were denied the opportunity to vote under DPA bylaws because they were not dues paying members of the I.B.P.O.
8. Copies of hearing notices were provided on January 22, 1997, by the DPA. The notice of September 6, 1996 informed those reading the posting that a union meeting would be held on Friday, September 20, at 7:30 hours at which meeting a vote on the acceptance of new members would be taken. Readers who wished to join the DPA were urged to speak with Officer Encarnacao. A notice dated October 4, 1996, alerted readers of a meeting for "current active members" scheduled for October 15, 1996. On the notice/agenda was the following: "A vote will be held to determine if the DPA wishes to remain affiliated with the I.B.P.O.. Only dues paying members will be allowed to cast votes on this issue."
9. Regulation PUB 301.05 indicates that an affiliation or dis-affiliation shall be recognized without the requirement of a PELRB election and intervention if three conditions are met, the second of which reads:

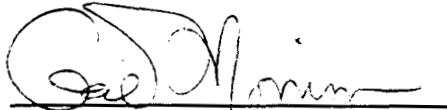
(a) (2) The employees in the bargaining unit have had a reasonable opportunity to be informed of the proposed change in... affiliation and have had the opportunity for appropriate input into that decision whether by direct vote, vote of their representative or other appropriate means. If these conditions are not met, an election is required.

DECISION AND ORDER

Regulation PUB 301.05 (a) (2) safeguards bargaining unit members' input into affiliation decisions. In this case, the requirement of "bargaining unit" member input, as opposed to union member input, into the decision regarding affiliation has not been met. The petitioner's request for an election to ascertain whether or not the bargaining unit members still wish to be represented by the International Brotherhood of Police Officers is granted. The order of election shall be issued.

So ordered.

Signed this 5th day of March, 1997.



Gail C. Morrison
Hearing Officer