



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES ASSOCIATION :  
OF NEW HAMPSHIRE, SEIU, LOCAL :  
1984 for SALEM ADMINISTRATIVE :  
and TECHNICAL EMPLOYEES :  
Complainant : CASE NO. S-0381:6  
v. : DECISION NO. 97-075  
TOWN OF SALEM :  
Respondent :

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### APPEARANCES

#### Representing State Employees Association of N.H.:

Terry DeNafio Donovan, Esq.

#### Representing Town of Salem:

Robert P. Leslie, Esq., Counsel

#### Also appearing:

Stephen Daly, Town of Salem  
Joseph Chamberlain, SEA Chapter 7  
Warren R. Winter, SEA Chapter 7

### BACKGROUND

The State Employees Association of New Hampshire, S.E.I.U. Local 1984 (Union), on behalf of Salem Administrative and Technical Employees, filed unfair labor practice (ULP) charges against the Town of Salem (Town) on March 12, 1997 alleging violations of RSA 273-A:5 I (a), (b), (e), (h) and (i) relating to unilateral changes in wages, direct dealing with bargaining unit employees without union presence and refusal to bargain. The Town filed an answer to those charges on March 27, 1997. This matter was heard by the PELRB on July 1, 1997 after an intervening continuance for a May 8, 1997 hearing was sought

by and granted to the Union. The record was left open until July 15, 1997 for the filing of post-hearing briefs.

FINDINGS OF FACT

1. The Town of Salem employs personnel who perform certain administrative and technical duties throughout its various departments and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The State Employees Association of New Hampshire, Local 1984, S.E.I.U., is the duly certified bargaining agent for all regular full-time and regular part-time employees in permanent positions within the administrative and technical employees' bargaining unit.
3. The Town and the Union are parties to a collective bargaining agreement (CBA) for the period April 1, 1995 through March 31, 1997. Article XVIII addresses layoff and recall. Bargaining unit employees who work 37 1/2 hours per week (Type I), who work 30 hours or more a week (Type II), or who works less than 30 hours a week due to an involuntary reduction in hours (Type I-A) are entitled to bumping rights. Article 18.3 of the CBA provides:

In cases of lay-off, an employee may bump, within his/her Department Grouping as defined below, into another position in the same Job Classification Grouping within the Department Grouping occupied by a less senior employee, or, if there are no junior employees in the Job Classification Grouping within the Department Grouping, into any other equal or lower paying Job Classification Grouping within the Department Grouping for which he or she is qualified. Bumping between Department Groupings is not allowed, except for employees with three or more years of service to whom no equal job classification would otherwise be available. Such employees may bump into any equal or lower paying Job Classification Grouping in any Department Grouping.

Type I, Type I-A, and Type II employees shall have bumping rights. Type III employees

do not have bumping rights.

If a recall occurs, employees shall return to their prior positions, provided these positions are being refilled. If those positions are not being refilled employees shall be recalled to other vacant positions for which they are qualified.

This contract continues under *status quo* pending the parties' efforts to negotiate a successor CBA. The parties' last negotiating session prior to the statutory deadline for submission of cost items was held on January 30, 1997. Mediation has since been requested and is on-going, following a PELRB appointment on April 11, 1997.

4. On February 24, 1997, at 4:45 p.m., the Town's Human Resource Administrator, Mary Donovan, called a switchboard operator/receptionist into her office and advised her that her position had been eliminated effective immediately. Town Manager Steve Daly testified that this position was eliminated because of a change in the physical configuration of the Community Development Department. On February 26 and 27, 1997, SEA representative DeNafio-Donovan asked Mary Donovan for a copy of the Town's reorganization plan. On March 11, 1997, Town counsel provided the Union with a packet of information which included a newspaper article from the Lawrence, MA, "Eagle Tribune" which contained a number of quotes. There is no evidence that the Town ever conveyed its "reorganization plan," or that it had such a plan, to the Union. Likewise, there is no evidence of bargaining which has resolved issues resulting from the implementation of the reorganization. Meanwhile, the switchboard operator/receptionist exercised, but later withdrew her letter exercising, her bumping rights and elected to be laid off and retired. Joseph Chamberlain, a senior engineering technician and president of SEA Chapter 7, testified that the operator/receptionist did not "bump" into another position because she could not assess its job content and responsibilities because, in turn, the Town could not and did not provide her, upon request, with a job description for the job(s) into which she might bump.

5. Also eliminated, or "not-filled," in addition to the operator/receptionist are the positions of Utilities Superintendent and Parks and Grounds Superintendent. At the time of the involuntary vacating and non-filling of the Utility Superintendent's position, the incumbent was only performing 25% of his originally intended and assigned job duties, according to Daly. Those remaining duties have since been reassigned to other personnel in another bargaining unit and the former Utilities Superintendent has exercised his bumping rights under the CBA to another job. Likewise, the former Parks and Grounds Superintendent has been offered an hourly paid position. Daly explained two reasons for the speed of the lay-offs or involuntary creation of the position vacancies: a \$500,000 budget reduction voted for FY 1998 and an ability to deal with the resulting personnel problems directly and personally, before Town employees would read about their situations in the newspaper.
6. Both parties offered testimony about changes caused in administrative secretaries' positions as the result of the reorganization, namely the potential and probability that two of them would be downgraded to Clerk III positions while one would fill the new, to-be-created administrative secretary position at the Community Development Department. Daly testified that Mary Donovan had met with position incumbents Ro and Lydia and that their salaries may drop if reclassified to Clerk III responsibilities. He also said, "We know we cannot reduce someone's pay if they continue to do the same job." The Union offered no evidence to establish that reclassifications have already occurred, that bumping rights under the CBA have been improperly applied, or that incumbents have been called upon to perform the same duties at a lesser rate of compensation.
7. The ULP claims, and the Town admits, that on February 21, 1997, it advised personnel in various unions who represent Town employees that the Town was offering an early retirement incentive plan. By its answer, the Town claims that no member of this bargaining unit elected the early retirement incentive and there is no

evidence to the contrary. There is no evidence of impermissible direct dealing with unit members as the result of the Town's distributing information about an early retirement incentive.

#### DECISION AND ORDER

We address this ULP by examining its three component parts. First, we have spoken to the disposition of the administrative secretaries in Finding No 6, above, namely, the Union has failed to show that they have yet to be harmed or that the CBA has been breached.

Second, all evidence involving the operator/receptionist shows that after she first stated that she wanted to exercise her bumping rights, she changed her mind and opted to be laid off and retired. There can be no contract violation with respect to her exercising bumping rights because, ultimately, she chose not to do so. As for her inability to access and evaluate job descriptions, there is no evidence that they existed, with any degree of currency, for jobs which she may have wanted to consider. Even Daly called the Town's job descriptions "admittedly dated," suggesting that they need to be revamped to show current and particularized responsibilities, over and above general or generic functions associated with the various job titles. Neither Mary Donovan nor any other Town official was called by the Union to show the state and/or availability of the Town's job descriptions or to contest the Town's suggestions as to the lack of applicability of the outdated text with they contain.

Third, both the Utilities Superintendent and the Parks and Grounds Superintendent have taken or been offered, pending acceptance, other positions in the Town at reduced rates of pay but in conformity with bumping rights described in the CBA. There is no evidence that they have been called upon to perform the same duties or assume the same responsibilities for a lesser rate of compensation. Likewise, there is no evidence that the manner in which these two employees were accorded bumping rights violated the CBA. While it appears that communications between the Town and the Union were not exemplary during the times complained of, this does not constitute a ULP, nor is it a breach of the CBA. As for the alleged RSA 273-A:5 I (a) and (b) violations, the New Hampshire Supreme Court has said "[T]he union must prove some minimal degree illegal motivation on the part of the employer to commit an unfair labor practice...[under] RSA 273-A:5 I (a) and (b)." Appeal of Sullivan County, 141 NH 82 at 88 (1996). Also, Appeal of White Mountain Education Association, 125 NH 771 (1984). There is no such showing here.

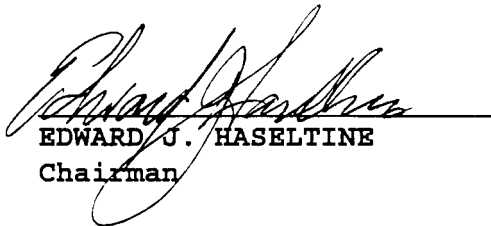
The Union also failed to show any prejudice resulting from the Town's conveying the contents of an early retirement incentive plan to

unit members. First, it appears it was conveyed to various unions throughout the Town. Second, no one was pressured or given an unreasonably short period of time to make a decision about the plan, which appears to have been no more or less than a change in certain Town policies. Third and finally, no unit members elected the plan, or, if they had--but they did not--made that election, later complained about it either as a misrepresentation or as a decision they were forced to make without the ability to consult with a union representative. There is no evidence of the elements of coercion or an unlawful shift in the balance of power resulting from either the dissemination or contents of the early retirement incentive plan such as to constitute impermissible direct dealing. The Union failed to show the "significant disadvantage" required by Appeal of Franklin Education Association, 136 NH 332 at 337 (1992).

The ULP is DISMISSED as to all charges.

So ordered.

Signed this  1st  day of  AUGUST , 1997

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.