



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF BERLIN :

Petitioner :

v. :

CASE NO. A-0455:11

A.F.S.C.M.E. LOCAL 1444 :

DECISION NO. 1998-026

Respondent :

APPEARANCES

Representing City of Berlin:

Susan Chamberlin, Esq.

Representing A.F.S.C.M.E. Local 1444:

Steven Torres, Esq., AFSCME, Council #93

Also appearing:

Mitchell Berkowitz, City of Berlin
Harriett Spencer, Staff Representative

BACKGROUND

On January 1, 1998, the City of Berlin (City) filed unfair labor practice charges alleging that A.F.S.C.M.E. Local 1444 (Union) had violated RSA 273-A:5 II (d), (f) and (g) by filing suit in Coos County Superior Court over a subject being bargained. On January 21, 1998, the Association filed its answer denying the charges. A hearing was held before the Board on

February 10, 1998. Briefs were received on March 2, and March 4, 1998.

FINDING OF FACTS

1. The City of Berlin employs personnel in the operation of municipal government and thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. A.F.S.C.M.E. Local 1444 is the duly certified exclusive bargaining representative for certain employees of the City of Berlin.
3. The Union and the City are parties to a collective bargaining agreement (CBA) for the period, July 1, 1993, through June 30, 1996. Article 30 makes reference to a retirement plan and contains a schedule of increases and a clause to allow reopening of the contract to discuss the pension plan.
4. Employees of the City of Berlin who qualify have had the benefit of a City sponsored pension plan since September 1, 1962. (City Exhibit No. 6).
5. By letter dated December 31, 1996, Maurice L. Daneault, Deputy Executive Secretary of the New Hampshire Retirement System, informed the City of its obligation to enroll City employees in the New Hampshire Retirement System in accordance with RSA 100-A. (Association Exhibit No. 1).
6. The parties agree that implementation of the transfer from the City Pension Plan, which is a group annuity policy administered by New England Mutual Life Insurance Company, to the New Hampshire Retirement System is a subject for bargaining and bargaining has been ongoing. In March, 1997, representatives of the Union, the O.P.E.I.U. bargaining unit and the City met to discuss the process of conversion from the present pension plan to the New Hampshire Retirement System. The tentative agreement between the Union and the City lists the matter as a work in process.
7. On September 11, 1997, more than two dozen individual employees of the City, who are members of the A.F.S.C.

M.E. bargaining unit, filed suit in Coos County Superior Court seeking an injunction that would require immediate enrollment of the plaintiffs in the New Hampshire Retirement System. *Alva R. McKenzie et al. v. City of Berlin et al.*, No. 97-E-0098, (Coos County).

8. Harriett Spencer, A.F.S.C.M.E. staff representative, denied that the Union had filed suit for the employees. Her un rebutted testimony was that she had tried to dissuade plaintiffs from pursuing any course but negotiations. Mitchell Berkowitz, Berlin City Manager, testified that he had no evidence that the Union supported the suit by the employees. There is no nexus between the filing of the action in Coos County Superior Court and the Union.

DECISION AND ORDER

The fact that A.F.S.C.M.E. Local 1444 is not a named plaintiff to the action filed in Coos County Superior Court (See Finding No. 7) does not, in and of itself, require dismissal of these unfair labor practice charges. Evidence concerning the context of the filing could well prove such charges. But, no evidence or testimony was presented which tended to support the City's charges that that Union was responsible for the filing of the petition for injunctive relief. The Union has committed no unfair labor practice. Therefore, the charges against the Union are hereby DISMISSED.

Signed this 25th day of March, 1998.


 JACK BUCKLEY
 Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.