

testimony related to events recorded on videotape. No witnesses attended the hearing. Therefore, the hearing was concluded without admission of additional evidence. The record was closed on July 16, 1998.

FINDINGS OF FACT

1. The Town of Litchfield (Town) employs police officers and others in the operation of its police department and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME Council 93, AFL-CIO Local 3657 (Union) is the "exclusive representative" of the bargaining unit of police department personnel pursuant to RSA 273-A:11. James Anderson is a staff representative for AFSCME Council Number 93.
3. The Union and the Town are parties to a collective bargaining agreement for a three year period ending March 31, 1997. (Town Exhibit No. 2). They entered into negotiations for a successor agreement in May 1996. Gary Wulf and David Donnelly, Chairman of Local 3657, signed ground rules on June 19, 1996. (Town Exhibit No. 4). More than six bargaining sessions took place before the Union declared impasse on January 16, 1997. Mediation was held on October 21, 1997, but was not successful in resolving the impasse. James Anderson had represented the bargaining unit during mediation after the declaration of impasse.
4. Fact-finding followed more than a year after the declaration of impasse. Gary Wulf represented the Town and James Anderson represented the bargaining unit when the parties presented their cases before Fact-finder Wilbur L. Jenkins on February 11, 1998.
5. Mr. Jenkins' report is dated March 3, 1998. (Town Exhibit No. 2 & 2A). The report was provided to the party representatives, Messrs., Wulf and Anderson, who forwarded it to their clients for consideration pursuant to RSA 273-A:12, I.
6. RSA 273-A:12, I authorizes fact-finding and sets

the following limitation on the parties:

"...[the fact-finder's] findings and recommendations shall not be made public until the negotiating teams shall have considered them for 10 days."

7. The Fact-finder's Report and Recommendations include the recommendation of three raises of three percent across the board to occur on April 1, 1998, January 1, 1999 and January 1, 2000. (Town Exhibit No. 2).
8. The Town of Litchfield held its Town Meeting on March 13, 1998. The minutes of the meeting were submitted into evidence at the hearing. (Town Exhibit No. 3). Toward the end of the meeting, David Donnelly, who is a senior Litchfield police officer but not a resident, was sitting in the non-voter section, when he stood and was recognized to speak. The meeting had approved a three percent raise for Town employees and Donnelly asked if a voter might propose extending the three percent raise to police department employees. Town counsel declared such an amendment not a proper subject to be addressed by the meeting. No vote was taken.

DECISION AND ORDER

RSA Chapter 273-A authorizes the Public Employee Labor Relations Board to determine and certify bargaining units of public employees. RSA 273-A:8 I. When a bargaining unit is determined appropriate and an exclusive bargaining representative is certified, that representative is then the sole bargaining agent for all employees in the bargaining unit. RSA 273-A:11.

AFSCME Local 3657 became the exclusive bargaining representative for the Litchfield Police Department employees in November, 1990. James Anderson is employed by AFSCME as the field representative and is assigned to carry out negotiations for that bargaining unit.

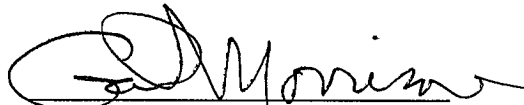
When an officer of a bargaining unit or a member of a board of the public employer speaks in public, the PELRB has been reluctant to presume those words have been spoken in an official capacity unless there is clear indication that such was the case. Candia Education Association, NEA-New Hampshire v. Candia School

District, Decision No. 1997-036 (1997). In the instant case, it will not be presumed that Mr. Donnelly was speaking as chairman of the bargaining unit in the absence of evidence of the same. He has testified that he was speaking at the Town Meeting as a police officer and made no reference to the fact-finder's report or any section of the report. There is no evidence to the contrary. Further, there is no evidence that Mr. Donnelly was authorized to speak as the exclusive bargaining representative of the bargaining unit. Mr. Anderson was so authorized and was present for the bargaining unit in the latter stages of negotiations.

The Town Meeting had just voted the same percentage raise for non-union employees for one year, as was recommended by Fact-finder Jenkins for three years, when Mr. Donnelly rose to speak. The vote for a three percent raise occurred prior to Mr. Donnelly's inquiry. A three percent raise was not Mr. Donnelly's whole cloth suggestion but was the percentage previously approved for non-union employees of the Town. Had the Town Meeting approved a two percent raise for non-union employees and Mr. Donnelly had suggested the same, it is doubtful that an unfair labor practice charge would have been filed.

While Mr. Donnelly's question may have been imprudent and confusing given his position as chairman of the bargaining unit, his speech does not constitute an unfair labor practice under RSA 273-A:5 II (a), (c), (d) and (g). Mr. Donnelly did not intend, nor was he authorized, to speak for AFSCME at the Litchfield Town Meeting on March 13, 1998. He did not reveal the contents of the fact-finder's report by asking his question. Therefore, the charges against the Union are hereby DISMISSED.

Signed this 7th day of August, 1998.



Gail C. Morrison
Hearing Officer