NH Supreme Court remanded this decision on July 23, 1996, Supreme Court Case No. 95-651.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, LOCAL 1348 FOR HANOVER TOWN EMPLOYEES Complainant v. TOWN OF HANOVER Respondent	CASE NO. A-0576:1 DECISION NO. 95-47

APPEARANCES

Representing AFSCME, Local 1348:

James C. Anderson, Staff Representative

Representing Town of Hanover:

Steven Hengen, Esq.

Also appearing:

Jean Ulman, Town of Hanover
Richard Haugur, Town of Hanover
William Mathieu, AFSCME Council #93

BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 1348 (Union) filed unfair labor practice (ULP) charges and a request for a Cease and Desist Order against the Town of Hanover (Town) on November 18, 1994, alleging violations of RSA 273-A:5 I (a), (c), (d), (g) and (i) relating to the Town's unilateral changes in personnel policies after the union had filed a petition for certification to represent certain Town employees and to intimidation resulting from those unilateral changes. The Town filed its answer by letter on December 2, 1994. After postponements sought by and granted to the parties on January 24, March 23, and April 25, this case was heard by the PELRB on May 4, 1995.

FINDINGS OF FACT

1. The Town of Hanover is a "public employer" of personnel in its Public Works Department and other employees within the meaning of RSA 273-A:1 X.

2. AFSCME, Local 1348 is the duly certified bargaining agent for public works department and other personnel employed by the Town. It was so certified on August 19, 1994 following an agreement on the composition of the bargaining unit as stipulated to the PELRB on May 31, 1994 (Decision No. 94-54). The Petition for Certification had been filed by AFSCME on April 15, 1994.

3. Although the Union's certification dates to August 19, 1994, the parties have not been successful in negotiating a collective bargaining agreement (CBA) between that date and the date of this hearing. During all pertinent times prior to and after the union's certification as bargaining agent, the town had a personnel policy manual. Prior to the Petition for Certification filed April 15, 1994, it was last revised with an effective date of July 1, 1991. Thereafter it was "rewritten" in 1994, reflecting policies which became effective on June 20, 1994.

4. The rewriting of the personnel policies impacted terms and conditions of employment of employees in the bargaining unit. By way of example, medical insurance, Blue Cross "Comp S", was fully funded by the Town in the 1991 personnel policies while the employees are required to share in 5% of the prior year's premiums and from 5 to 15% of the premium increases under the 1994 re-write. Likewise, retirees between 62 and 65 years of age covered under the policies with extended health insurance coverage under the 1991 version will see those benefits reduced by 25% increments until the full cost of such coverage is borne by the retirees as of July 1, 2000. The rewrite also made unilateral changes in certain definitions (e.g., disability leave, dismissal and full benefits date), made the "probationary period" the "initial evaluation period" and made adjustments in the "hours of work" section. The Town claims these changes were made known to bargaining unit employees by memo of February 18, 1994. (Town Exhibit No. 2). The Union claims that, notwithstanding the February 18th memo, these changes were not finalized and changed by the selectmen until June 20, 1994, after the filing of the certification petition and after

the agreement on bargaining unit composition on May 31, 1994.

5. The Town contemplated a 2 1/2% general wage increase for bargaining unit and other employees as early as February 18, 1994. (Town Exhibit No. 2). This increase was implemented, along with the changes referenced in paragraph 4, above, effective July 1, 1994, after the Union had filed the Petition for Certification. The Town selectmen had approved a budget incorporating these changes in March of 1994, subsequent to budget committee meetings in February of 1994 but before the filing of the certification petition in April and the annual town meeting held in May.

6. Counsel for the Town made an offer of proof that the Town Manager offered to negotiate the changes in the personnel policies on October 4, 1994, provided those negotiations would be from the status of the personnel policies as of the date of the union's certification, not from the date of its filing the Petition for Certification.

DECISION AND ORDER

This case rests on the date from which the status quo of the terms and conditions of employment of the affected employees should run, or, said differently, from which negotiations should start if the union should be certified. The Union has urged that that date is the date of the filing of the certification petition. The Town has argued that it is the date when the union was certified as bargaining agent. Both under RSA 273-A:3 I and as cited in the Town's brief (p. 7), there is no obligation to bargain unless and until the union is certified. Here, we are faced with a chronologically more fundamental principle, namely, from what point must the playing field be kept level prior to that certification election.

This Board subscribes to the "laboratory conditions" rule which suggests that it is the administrative agency's role in such matters "to provide a laboratory...[in which] to determine the uninhibited desires of the employees." General Shoe Corp., 77 NLRB 124, 21 LRRM 1337 (1948). In looking to when these laboratory conditions should start, we use the "critical period" standard. Conduct forming a basis for complaint must occur during what has been called the "critical period" before the bargaining agent election. That critical period "begins to run from the day on which the representative petition is filed." See Feerick, Baer and arfa, NLRB Representation Elections, p. 400 and Red's Novelty Co., 222 NLRB 899, 91 LRRM 1370 (1976).

While the Town has argued "no harm, no foul" because the union won the certification election, we disagree, especially as to remedy. Were we to agree with the Town's position and its offer to bargain from the status of the personnel policies (i.e., working conditions) as they existed on the date of certification (Finding No. 6), the playing field would be tilted in its favor with the union having to negotiate and recover to conditions as they existed prior to June 20, 1994 before getting off to an even start. We have been diligent in attempting to prevent either the enhancement or reduction in employee benefits prior to a bargaining agent election. Notwithstanding that sometimes modifications by an employer may prompt the employees to vote for a union, our function is to attempt to achieve an atmosphere where employees may vote in such a way to express their "uninhibited desires" relative to the organizational campaign. As was the case in Professional Fire Fighters, Local 3420 v. Town of Goffstown, Decision No. 92-107 (June 11, 1992), the mere appearance that voting conditions may be unduly influenced by the actions of the selectmen on June 20, 1994 causes us concern and to find that the Town violated RSA 273-A:5 I (c) in so doing.

The Town is directed to reinstate wages and terms and conditions of employment to what they were on April 15, 1994. The issues involved are subjects for negotiations

So ordered.

Signed this 21st day of July, 1995.

EDWARD J. HASELTINE
Chairman

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