



NH Supreme Court reversed this decision on November 21, 1996, Slip Opinion No. 95-165, 141 NH 443 (1996).

# State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROBERT CUSHING	:	
	:	
	:	
Petitioner	:	
	:	CASE NO: M-0691
and	:	
	:	
HOUSE LEGISLATIVE FACILITIES	:	DECISION NO. 94-19
SUBCOMMITTEE and LEE MARDEN,	:	
CHIEF OF STAFF OF THE	:	
NEW HAMPSHIRE HOUSE OF	:	
REPRESENTATIVES	:	
Respondent	:	
	:	

### APPEARANCES

Representing Robert Cushing:

Mr. Robert Cushing

Representing House Legislative Facilities:

Lorrie Platt, Esq., Counsel

Also appearing:

Mr. Peter Kellman  
Mr. Jay Ward  
Betsey Engel, U.A.W.  
Carol Know, U.A.W.  
Thomas F. Manning, State of New Hampshire  
Leda Hartman, N.H. Public Radio  
Warren Hastings, Union Leader

### BACKGROUND

Robert Cushing, an employee of the New Hampshire House of Representatives, filed a petition seeking a declaratory judgment on October 28, 1993. He requests determinations that he and other employees of the New Hampshire House of Representatives are "public employees" within the meaning of RSA 273-A:1 IX and who organize for purposes of negotiating under the provisions of RSA Chapter 273-A. Further, he seeks judgments as to whether or not policies

against workplace discrimination on the basis of political affiliation, sexual orientation, sexual harassment and fraternization are mandatory subjects for negotiation or matters considered within the exclusive prerogative of management. A response to the petition was filed on November 12, 1993 on behalf of the House Legislative Facilities Subcommittee and Chief of Staff, Lee Marden. A motion to intervene was received from the International Union of the United Auto Workers on December 16, 1993.

A hearing was held before the PELRB on December 21, 1993, after which the record remained open for the receipt of a job description for the position of legislative research assistant in the minority office and for final memoranda. The last of these documents were received on January 13, 1994.

#### FINDINGS OF FACT

1. Robert Cushing was hired in September of 1991 by the House Legislative Facilities Subcommittee which is statutorily charged with legislative management of the New Hampshire House of Representatives. He works in the position of legislative research assistant in the minority office. A copy of a job description signed by the petitioner on October 18, 1991 indicates his immediate supervisor to be Donald P. Manning who is the administrative assistant in the minority leader's office.
2. The General Court Personnel Manual was given to him at hire. (Petitioner's Exhibit No. 1) It defines a permanent full-time employee as one who works a regular five day week, is entitled to all benefits, accrues all leave, and whose position has no expiration date.
3. Mr. Cushing's research indicates there are in the vicinity of 125 legislative employees who meet the above definition of permanent full time employee and who function under the same progressive discipline system with grievance procedures, are evaluated under the same performance criteria and who work within the same framework of policies described in the General Court Personnel Manual.
4. As legislative research assistant for the minority office, the petitioner researches and writes up legislation for the minority leader and other representatives. The subject of that legislation can deal with labor policy and strategy matters.
5. RSA 17-E:1 established a joint committee of the House

and Senate to deal with legislative facilities. RSA 17-E:5 established subcommittees of the House and Senate to manage the affairs of each body including the maintaining of a salaried staff.

6. RSA 273-A:1 X, in pertinent part, defines a public employer as the state or any political subdivision thereof. It is not contested that the House of Representatives is a political subdivision of the state. There is no branch of government excluded and no branch of government specified as a public employer.
7. RSA 273-A:1 IX defines a public employee as any person employed by a public employer. This section states several exceptions who may not organize for negotiation purposes under this act. Excluded are elected or appointed employees, confidential employees and temporary employees. Employees of the legislative branch of the state are not named as excluded.
8. As the petitioner stated, the public employee labor relations statutes in the neighboring states of Vermont enacted in 1969 and Connecticut enacted in 1975 do address whether or not their legislative employees are among those who may organize to negotiate with the public employer. A review of these statutes shows the State of Vermont specifically excludes legislative employees and the State of Connecticut specifically includes employees of the executive and judicial branches only.
9. Documents related to the 1975 legislative history of RSA 273-A demonstrate that the present statute is a hybrid of the Senate approved version and the House approved version of a public employee labor relations bill. The Senate-passed language, which limited those who might organize to county and municipal employees, was rejected by the committee of conference in favor of the more inclusive House bill's language.
10. The original RSA 273-A:9 established a process for negotiations and a state negotiating team to be set up by the governor made up of members of the executive branch of government. In 1986, the legislature added a joint committee on employment relations made up of legislative leadership which has an active role in the adoption of collective bargaining agreements. This section of the statute applies to certain groups of employees of the executive branch of government and not to employees of other subdivisions of the state.

DECISION AND ORDER

Essential to the question of whether employees of the New Hampshire Legislature are a class of employees who may organize for the purpose of negotiating are the statutory definitions of public employer and public employee. RSA 273-A:X defines a public employer as the state and any political subdivision thereof, any quasi-public corporation, council, commission, agency or authority, and the state university system. RSA 273-A:1 IX defines a public employee as any person employed by the public employer. Exceptions are those who are voted or appointed and those who are temporary, probationary, seasonal, irregular or on call employees. The petitioner is none of these.


The legislature which adopted the Public Employee Labor Relations Act in 1975 chose broad language with narrowly carved out exclusions similar to those found in the National Labor Relations Act and in sister states' versions of this act. Unlike some other states such as Vermont and Connecticut, there is no exclusion in our statute of the class of public employee who works within the legislative branch of government. A plain language reading of the statute allows for organizing by full-time permanent employees of the legislative branch or subdivision of the state.

Legislative documents provided this Board relating to the history of RSA Chapter 273-A include pertinent excerpts from House and Senate Journals. Review of these documents show that narrower definitions of public employer were considered and rejected in favor of the broader terminology of the statute. Earlier versions of the bill referred to municipal and county employers while later versions included subdivisions of the state and the state as well. Particularly telling on the breadth of legislature's consideration is former Senator Alf Jacobson's remarks endorsing the bill as amended on the day of passage, June 17, 1975. In addressing employer/management prerogatives on the floor of the Senate, he stated, ". . . collective bargaining . . . is limited to wages and basic terms of employment . . . public policy remains in the hands of publicly elected officials, whether they be councilmen, selectmen or school board members or the State Legislature."

In answer to the initial question posed, there is no barrier to the formation of a bargaining unit by permanent full-time employees of the House Representatives and by other similarly situated employees within the legislative branch of New Hampshire government. Determinations regarding the make-up of such a bargaining unit or units and the scope of bargaining are premature and so Mr. Cushing's further inquiries are not now reached. This Board will not go beyond the threshold matter of eligibility under RSA 273-A herein addressed.

So ordered.

Signed the 20th day of May, 1994.

  
EDWARD J. HASELTINE, Chairman

By majority vote. Members Seymour Osman and E. Vincent Hall voting in the majority. Chairman Edward J. Haseltine voting in the minority.

Chairman Haseltine's dissenting opinion is as follows:

I dissent from the majority opinion for the following reasons;

- (a) Legislative history of RSA 273-A does not in anyway indicate that its provisions should be extended to Legislative employees.
- (b) 273-A:1 X defines "Public Employees" means the state or any political subdivisions thereof, any quasi-public corporation, council commission agency or authority and state university system. By the statutes silence on the matter of legislative employees seems to exclude them from the provisions of 273-A.
- (c) 273-A:9 deals specifically with "Bargaining by State Employees." The position before this board for consideration is that of Legislative research assistant to the House Minority Leaders office appears to be one logically included in a bargaining unit of State Employees. Testimony at hearing indicated the position is funded by Legislative appropriations included on the state payroll and is entitled to all the benefits awarded a state employee.
- (d) Since the subject of legislative employees is not specifically referenced in 273-A and no definite legislative action either to include or exclude under 273-A, I believe this issue should be resolved by legislative action and not left a matter of administrative agency's interpretation.