



NH Supreme Court reversed and remanded this decision on June 3, 1996, Slip Opinion No. 94-279, 141 N.H. 82 (1996).

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME COUNCIL 93, LOCAL 3438,
SULLIVAN COUNTY SUPPORT
SERVICES

v. Complainant

SULLIVAN COUNTY

Respondent

CASE NO. A-0572:1

DECISION NO. 93-164

APPEARANCES

Representing AFSCME LOCAL 3438:

James C. Anderson, Staff Representative

Representative Sullivan County:

Marc Hathaway, Esq.

Also appearing:

- Frank MacConnell, Jr., Sullivan County
- Ethel Jarvis, Sullivan County
- Howard Tawney, Sullivan County
- Sharon Curtis, Sullivan County
- Doris A. Hale, Sullivan County

BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 3438, Council 93 (Union) filed unfair labor practice (ULP) charges against Sullivan County (County) on October 15, 1993 alleging violations of RSA 273-A:5 I (a), (b), (c) and (i) relating to unilateral changes in conditions of employment after a Petition for Certification was filed on July 26, 1993. Decision No. 93-152 dated December 10, 1992. The County filed an

answer on October 28, 1993 after which this matter was heard by the PELRB on December 14, 1993.

FINDINGS OF FACT

1. Sullivan County is a "public employer" within the meaning of RSA 273-A:1 X.
2. AFSCME, Council 93, is a labor organization which represents public sector employees, as defined by RSA 273-A:1 IX, the State of New Hampshire.
3. On March 13, 1993 Howard Tawney, Human Resource Manager for Sullivan County, sent a memo to the Commissioners on the topic of "Benefit Analysis for Non-Union Employees." In it, he recommended changes to current wage and benefit levels which would take employees off step, limit hiring-in step levels, implement an earned time program, reduce of sick time buy backs and limit sick leave accrual.
4. On May 13, 1993, Tawney issued a memo to all non-union employees telling them that the earned time program would be implemented on July 1, 1993. Also issued on May 13, 1993 was a memo changing vacation days and personal days from current practice under the County's existing Personnel Policies. (Union Ex. No. 1)
5. At the Commission-Delegation meeting held June 4, 1993, it was moved and voted unanimously to postpone the personnel benefit changes to become effective July 1, 1993, until the delegation should vote approval of the FY '94 budget. This information was conveyed to non-union employees by a memo of the same date from Tawney.
6. On July 26, 1993, the Union filed a Petition for Certification for the positions of Human Services Administrator, Accounts Payable Clerk, Payroll Clerk, Soil Conservation Technician, Administrative Assistant, Registry Clerk, Secretary, Administrative Secretary-Sheriff's Department, Janitor, Deputy Register and Account Clerk. After hearing on October 28, 1993, the PELRB established a bargaining unit as is more specifically described in Decision No. 93-152 dated December 10, 1993.
7. On August 27, 1993 Tawney sent a memo to all non-bargaining unit employees which ended the sick leave

buy-back program, combined personal days and holidays to a limit of 12, and rolled all vacations, personal and holiday time on the books into earned time with a deadline of March 30, 1994 to use "excessive" earned time. These changes modify the County's Personnel Policy (Union Ex. No. 1) and represent unilateral changes not discussed with the Union.

DECISION AND ORDER

This Board has a long and consistent policy of maintaining the status quo during the pendency of Certification Petitions and bargaining agent elections. To do otherwise would fail to maintain the "level playing field" so necessary to insure a fair and impartial election which is not unduly influenced by the actions of the parties. We deem it essential to maintain the "laboratory conditions" which assure that the campaign and election environment is free from "an atmosphere calculated to prevent a free and untrammelled choice by the employees." General Shoe Corp., 77 N.L.R.B. 124, 126; 21 L.R.R.M. 1337, 1340 (1948). Under this standard, "elections may be set aside on the basis of conduct which renders the free choice of representatives improbable, even though such conduct may not constitute an unfair labor practice." See General Shoe, above and Rodac Corp., 231 N.L.R.B. 261, 95 L.R.R.M. 1608 (1977). In this case, we find the conspicuousness and severity of the unilateral changes to have been so broad and far-reaching across the entire range of petitioned-for employees that they constitute a ULP in violation of RSA 273-A:5 I (a) and (b). The County is directed to CEASE AND DESIST and to return immediately to the status quo as it existed on July 25, 1993 before the petition was filed. This order applies only to employees in the bargaining unit as defined by Decision No. 93-152 referenced in Finding No. 6.

So ordered.

Signed on the 16th day of December, 1993.


 JACK BUCKLEY, Alternate Chairman

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