

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROGER A. BOUCHARD

Complainant

and

CITY OF ROCHESTER, NEW HAMPSHIRE AND
GEORGE C. NADEAU, COMMISSIONER

Respondent

CASE NO. M-0511

DECISION NO. 780049

APPEARANCES

Representing the City of Rochester, New Hampshire:

William B. Cullimore, Esquire
Paul Urion, Esquire, City Solicitor
Henry Paradis

Representing Roger A. Bouchard:

James Guyett
Roger A. Bouchard

BACKGROUND

Following the initial decision of this Board in the above-captioned case, a request for rehearing was filed by the City of Rochester, New Hampshire alleging that new evidence was available. A rehearing was held by the Board on May 31, 1978 at which all parties were represented and presented evidence. The initial Board order of reinstatement with back pay for Roger A. Bouchard to the date of his hearing by the Public Works Commission of the City of Rochester which resulted in his "indefinite suspension" by the city was challenged by the City which alleged that he had in fact been fired, not suspended.

After the hearing, the Board requested of the parties copies of the contract between the parties since there was an issue in the matter of whether the parties were observing the contract provisions as to grievances. Despite repeated requests, this was not supplied the Board until late August.

FINDINGS OF FACT AND RULINGS OF LAW

The Board has considered the evidence produced at the additional hearing and has reviewed the contract provisions regarding grievances. The Board finds upon reviewing the evidence that the parties were in fact observing the provisions of the contract on grievances, termination and the like as to a hearing before the Public Works officials of the City. After the hearing, the employee was told that he was "indefinitely suspended". Nothing was presented at the rehearing to change the mind of the Board that this is what Mr. Bouchard was in fact told. It is clear that this was the information given to the Department of Employment Security since Bouchard was unable to

get unemployment benefits since he had not been discharged but merely "indefinitely suspended" subject to recall at the decision of the Public Works officials.

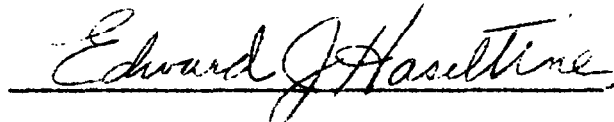
This Board is not in the business of second-guessing grievance procedures or decisions clearly made on the basis of evidence under those procedures. However, in this case, the Board cannot sit by and countenance a clear example of unfair treatment of an employee by a public employer. In this case the employee was never allowed to confront his accuser before the Public Works committee. There was evidence to show that the credibility of the accuser was at least subject to question and all evidence on the record before the Board and the Public Works officials, with the exception on hearsay in written or oral form which was contradicted on the record and subject to cross-examination, was that the employee had not engaged in the actions complained of. Evidence of the hearing conducted in Rochester was conclusive that Bouchard did not get a complete hearing. Finally, his "indefinite suspension" was not a firing, was not a clear decision of termination, and put him in limbo which was certainly an unfair position, not allowing him to know whether to seek additional employment, when he would return to work, if at all, and not allowing him to apply for unemployment compensation successfully. This unfair treatment and result could not have been contemplated by those designing and attempting to put into practice the grievance review system. It was and continues to be an unfair situation constituting an unfair labor practice.

The original order of this Board called for back pay and reinstatement of the employee, Roger Bouchard. The Board affirms that order with the understanding that any pay which Bouchard has gotten in the interim period will be off-set against any amounts of back pay due and he will be credited with any automatic pay increases which may have been granted to his position during the period in calculating back pay.

ORDER

The Board issues the following order:

1. The order of March 28, 1978 is affirmed and shall be read consistently with the findings in this decision as to back pay.
2. Roger Bouchard shall be reinstated at once.
3. The parties shall report compliance with this order to the Board within ten (10) days of this order.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 29th day of November, 1978

Unanimous vote. Edward J. Haseltine, Chairman and Board members Richard H. Cummings, Edward L. Allman, Joseph B. Moriarty and James C. Anderson present and voting. Also present Board Clerk Evelyn C. LeBrun