

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROCHESTER POLICE OFFICERS' ASSOCIATION	:	
CHAPTER NO. 63, STATE EMPLOYEES'	:	
ASSOCIATION OF NEW HAMPSHIRE, INC.	:	
	:	
Complainant	:	
	:	CASE NO. P-0712:1
v.	:	
	:	DECISION NO. 78002
	:	
CITY OF ROCHESTER, ROCHESTER,	:	
NEW HAMPSHIRE, through its Agents,	:	
Mayor John Shaw and City Solicitor,	:	
Paul Urion	:	
Respondents	:	
	:	

APPEARANCES

Representing the Rochester Police Officers' Association, SEA:

Robert Clark, Esquire, Counsel
Denis Parker, Executive Director
Thomas Hardiman, Field Representative

Representing the City of Rochester, New Hampshire:

Robert E. Fisher, Esquire, Counsel
Paul B. Urion, Esquire, City Solicitor

Representing the certain individual Police Officers:

Stanley Mullaney, Esquire
Eddie Welsh, Patrolman
Robert Pantanella, Jr., Patrolman

BACKGROUND

The Public Employee Labor Relations Board, following the failure of the City of Rochester to abide by its Decision No. 780043, cancelled the scheduled election for the Police Officers of the City of Rochester, New Hampshire until such time as further hearing could be held, on its own motion and at the request of the State Employees' Association which raised certain unfair labor practice complaints and other issues concerning Board procedures in scheduling an election at the same time that there was a failure to comply with an outstanding Board order. The substance of the unfair labor practice complaints brought by the SEA was that certain actions by the City Solicitor and Administration of the City of Rochester were unfair labor practices and that the voting list as prepared at a pre-election conference was faulty in that certain probationary officers should not be allowed to vote.

A hearing was held at the offices of the Public Employee Labor Relations Board in Concord on January 17, 1979. All parties were represented by Counsel and had an opportunity to be heard.

It is the position of the City of Rochester and of counsel representing certain police officers, that the election should go forward immediately and that no unfair labor practices had occurred. It is the position of the SEA that no election should be scheduled until collective bargaining has taken place between the parties as ordered by the Board and that the actions by the City were unfair labor practices and the voting list should be amended.

The Board has considered all the evidence connected with the matter and makes the following findings of fact and ruling of law:

FINDINGS

Concerning the unfair labor practice complaints filed by the SEA, the Board orally ruled at the hearing and reaffirms its ruling in this decision that the portion of the unfair labor complaint that concerns actions by the Administration of the City of Rochester and/or the City Solicitor have been the subject of prior unfair labor practice complaints which culminated in Decision No. 780043, are in essence the same complaints and will not be decided again. Therefore, that portion of the complaint is dismissed. As to the complaints concerning the voting list, Board rules and procedures provide that the voting list will be decided at a pre-election conference and any challenges to voters not resolved at the pre-election conference can be made at the time of the election and will be decided after the election if the votes of the challenged voters could affect the outcome of the election. Therefore, the Board ruled and reaffirms its ruling that the State Employees' Association has the right to challenge any voters it wishes at the polling place subject to review by the Board, if necessary, following the election.

On the request of the SEA that the election be postponed and the opposition to that request by the City and certain police officers, the Board notes that the statutory scheme in RSA 273-A must be looked at as a system. There are various aspects to the labor relations scheme in New Hampshire which complement each other. No element stands alone. Therefore, the law provides that after certification of an exclusive bargaining representative, that representative and the employer have one year in which to negotiate and reach agreement prior to any time that a challenge can be made to the representation status of the employee organization. This pre-supposes that bargaining in good faith will be carried on during that period of time. It is, at least partially, intended as a period in which the members of the labor organization can evaluate the actions and performance of the labor organization. If, however, negotiations do not take place, and if, as has been decided in relation to Rochester and its police officers (See PELRB Decision No. 780043) it is the fault of the employer that these negotiations do not take place, then the employees have no opportunity to evaluate the performance of the organization and the organization is not given a fair chance to reach an agreement. To allow an election to take place under such circumstances would make a mockery out of the statutes since it would enable an employer through its own actions to delay, refuse to bargain, and otherwise frustrate the process in order that it might get to a time when decertification could be sought.

The Board recognizes that the right of public employees to select their own representatives by secret ballot in fairly conducted elections is one of the most sacred rights granted by the statute. At the same time, however, the Board

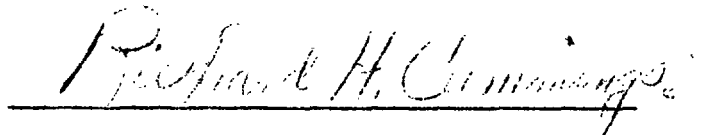
recognizes that the process must be a balanced one and all requirements of the statute must be followed. Therefore, in a case in which there is clear evidence and the finding has been made that the employer refused to designate the appropriate bargaining representatives from the employer, refused to sit down with the employee organization and has refused to comply with a subsequent order of the Board that bargaining take place, and has refused to comply with a court order enforcing that Board decision, the Board must find a way for the process to work in a balanced way.

While this decision does not treat with all of the possible situations in which consideration should be given to the obligation to bargain prior to an election, after a decertification election has been requested, and while these matters will be further addressed in a later decision of the Board in connection with the University System of New Hampshire and the New Hampshire Education Association, the Board is prepared to decide the specific case which is presented before it. The Board therefore holds that in a situation where the employer has consistently refused to bargain prior to the request for a decertification election, that decertification election will not be held until such time as meaningful bargaining has taken place between the parties as contemplated by the statute. This is to enable all participants to view the system for bargaining in a balanced way and to allow employees to make their decision and evaluate the participants after the system as it is designed to work has had a chance to work rather than to make their decision after that system has been abused.

ORDER

The Board issues the following order:

1. The unfair labor practice complaint filed by the SEA as it refers to actions of city administrators is dismissed as being redundant.
2. The unfair labor practice complaint of the SEA as it applies to the eligible voters may be taken up after the election if those voters are challenged and if their votes could have affected the outcome of any election.
3. The election among police officers in the City of Rochester, New Hampshire is postponed until such time as the Board finds that meaningful negotiations between the certified bargaining representative and the City have taken place.



Richard H. Cummings, Acting Chairman
Public Employee Labor Relations Board

Signed this 14th day of February, 1979

Members Moriarty, Anderson and Mayhew also voting. All concurred. Board Clerk Evelyn LeBrun and Counsel Bradford E. Cook also present.