STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL #298	CASE NO. A-0456:1
v.	DECISION NO. 79033
CITY OF MANCHESTER, MANCHESTER WATER WORKS	

AMENDED DECISION

The original decision in the above-captioned case is hereby amended as follows:

Delete references on page 3 of said decision concerning the vote of Mr. Moriarty and indicate the following: "Chairman Edward Haseltine presiding. Members Cummings, Moriarty and Mayhew also present. Members Cummings and Mayhew join in this decision. Member Moriarty dissents as stated below. Board Counsel, Bradford Cook, also present.

Joseph Moriarty, member, dissenting.

I dissent from the finding of the Board and would have sustained the charges and requests brought by the American Federation of State, County and Municipal Employees, AFL-CIO, Local #298."

Joseph B Moriarty

JOSEPH MORIARTY, BOARD MEMBER

Signed this 10th day of April, 1980.

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

American Federation of State, County and Municipal Employees, AFL-CIO, Local #298	:	
v.	:	CASE NO. A-0456:1
City of Manchester, Manchester Water Works	:	DECISION NO. 79033

APPEARANCES

Representing the American Federation of State, County and Municipal Employees:

James J. Barry, Jr., Esquire, Counsel
William McDonough, Executive Director

Representing the Manchester Water Works:

Charles Flower, Esquire, Counsel
Thomas Tessier, Esquire, Water Commissioner
Fred Elwell, Director

BACKGROUND

This case arises out of an unfair labor practice complaint brought by the American Federation of State, County and Municipal Employees (hereinafter AFSCME) against the Manchester Water Works, a department of the city of Manchester. The complaint, under RSA 273-A:5 I (a) & (b), alleges that the commissioners sought to intimidate and interfere with the rights of their employees by communicating directly with the employees by letter prior to an election. Sufficient employees petitioned this Board for an election and an election was scheduled for October 5, 1979 to determine whether the employees wished to be represented by AFSCME or "no representative".

During the "campaign period", the water commissioners met and on September 27, at a meeting of the commissioners, discussed the proposed representation and voted that it was not in the best interest of the employees to be represented by the union, feeling that the pre-existing situation served the interest of the employees and the Water Works Department best. Seeking to communicate this information to the employees, Fred Elwell, Director and Thomas Tessier, Esquire, a member of the commission, drafted a letter and two page question and answer sheet to be sent to the individual members of the proposed bargaining unit as an expression of the opinion of the Water Works commissioners. This letter was reviewed by the City Solicitor's Office prior to sending.

Evidence at the hearing indicated that the letter in question with the question and answer sheet was sent at the beginning of October and received by the employees at their homes during the period immediately proceeding the election.

Evidence at the hearing indicated that another letter, signed by James Anderson, President of AFSCME Local 298, was sent to the employees after the letter from the commissioners was received. Because of the timing, the evidence at the hearing was that not all employees received this letter. The later letter also contained a two page question and answer sheet seeking to answer the same questions from the union's perspective that were answered by the management brochure.

At the hearing, AFSCME maintained that the sending of the letter, adoption of the vote and communication by mail on official stationery was in violation of the law and, more specifically, that two questions on the second page of the question and answer sheet supplied by the Water Works Department were inaccurate and misleading. Those questions were as follows:

> "Am I entitled to my existing benefits?"
>
> "If Local 298 becomes the bargaining representative, all items become subject to negotiations."
>
> "In the event Local 298 is defeated, can an Employees Association be formed?"
>
> "Yes. The employees involved can petition the Board of Water Commissioners for a new Employees Association."

The union maintained that all items become subject to negotiations in any event at the end of the contract presently in force so that the first listed question was incomplete and that it was inaccurate to state that the Employees Association can be formed by petitioning the water commissioners, since the formation of any union and its recognition are subject to the rules and regulations of the Public Employee Labor Relations Board and any petition must be made to this Board.

The hearing was held at the Public Employee Labor Relations Board offices on October 25, 1979. At the hearing, various witnesses appeared and testified concerning the activities. Relevant testimony at the hearing is reviewed below.

FINDINGS OF FACT AND RULINGS OF LAW

As this Board stated in a recent Decision No. 79025, the Board is reluctant to set aside the results of an election absent clear and specific evidence of improper action and its effects on the results. Further, in that decision, the Board stated that employers are allowed to adopt statements regarding collective bargaining setting forth their view concerning the desirability or undesirability of representation of their employees. As the Board said in that case, "the Board finds that the statement itself is not illegal and that the ... (employer) ... has a right to take a position on the desirability of unionization ..." The Board required that for the adoption of such a statement to be an unfair labor practice, it must be established that the statement was illegally applied or intended for illegal reasons.

In many ways, this case is similar to the cited case.

The evidence at hearing indicated that the Board of Water Commissioners adopted the statement on collective bargaining because they were concerned that their employees not make a choice which they, the commissioners, felt was inappropriate and wished to express their opinion thereon.

Further testimony indicated that the letter was sent with questions and answers rather than a meeting held so that no physical intimidation or felt threat would be present and that the letter as sent was reviewed by the City Solicitor's Office to avoid charges such as the one brought. While there is nothing magic about review by counsel, it is some indication of the care taken by the employer.

The employee organization representatives and witnesses indicated that they had had an opportunity to campaign and express the opinion of the union and reasons for unionization. Indeed, the letter from James Anderson to the employees after the letter from the commissioners was known to the union, indicates the opportunity for refuting the claims in the employer's letter and there was no evidence that personal delivery to employees or other means of communication were not available up to and including the day of the election. In short, the union did not allege that it did not have every opportunity to campaign and get its message across. The allegation is that the letter coming from the employer somehow was intimidating.

Union witnesses indicated that it was their opinion that votes had been changed although no more than one vote was actually known to have been changed. There is no doubt and the employer conceded that the purpose of the letter was to have employees vote against the union. This was the employer's opinion as to the proper action by employees and the Board has stated in the past that, absent improper action, it is the right of the employer to adopt and express such an opinion in the election process. There is no requirement that the employer in such a communication list every possible side of every possible issue. The two questions raised by the union as misleading have not been demonstrated to have mislead anyone. In fact, the question concerning petitioning for a new employee organization if the union lost was incorrect. However, the Board finds this to have been an error which was harmless at worst. The union was unable to show that the other and allegedly incomplete answer concerning negotiability of benefits if the union won affected any vote. Likewise, the union was unable to show any intimidation resulting from the letter or other actions of the employer.

In short, the union was uanble to demonstrate to the Board's satisfaction that the actions by the employer were determinative of the outcome of the election in any improper way or that the employer took any action which was not within its rights. The union had every opportunity to campaign and participate in the election. As the witnesses stated, they had an opportunity to discuss the merits with all other employees and the other employees had an opportunity to obtain all points of view. Although the election was close, the Board cannot find that the letter from the employer was the determining factor even if the letter were improper and the Board also cannot find that the letter itself was improper. Employers have a right to express their opinion and participate in the election process and there was nothing illegal about the action of the employer in this matter.

ORDER

The Board issues the following order:

Having failed to sustain their charges, the charges filed by the American Federation of State, County and Municipal Employees are dismissed.

Edward J. Haseltine

EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 7th day of November, 1979.

Chairman Edward Haseltine presiding. Members Cummings, Moriarty and Mayhew also present. All concurred. Board Counsel, Bradford Cook also present.