STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL NO. 68 　　　　　　　　　Complainant 　　　　　　v. TOWN OF MERRIMACK, NEW HAMPSHIRE, AND JAMES A. MCSWEENEY in his capacity as Town Manager 　　　　　　　　　Respondent	CASE NO. A-0459-1 DECISION NO. 80035

APPEARANCES

Representing AFSCME, AFL-CIO, COUNCIL NO. 68:

Joyce Anderson, Assistant Executive Director
James Anderson, President, Council 68

Representing the Town of Merrimack:

Laurence E. Kelly, Esq., Counsel
James A. McSweeney, Town Manager

BACKGROUND

On May 5, 1980, AFSCME, Council No. 68 filed a complaint of unfair labor practice against the Town of Merrimack, alleging a violation of RSA 273-A:5, (a), (b) and (g), specifically that the Town interfered with the rights of the employees by electioneering at the polling area during the run-off election held at the Treatment Plant and the Highway Department on April 29, 1980. The only remedy sought by the Union was to find that the Town was guilty of unfair labor practice.

The Town on the other hand, requested the election be set aside because of an alleged error in the sample ballots forwarded by PELRB for posting, stating that at least one of their employees was illiterate and did make a mistake when he cast his ballot.

FINDINGS OF FACT

1. An election was held by PELRB on April 9, 1980 and resulted in a tie vote. Run-off election was held on April 29, 1980 resulting in a 14 to 12 votes in favor of AFSCME.

2. The American Federation of State, County and Municipal Employees, AFL-CIO, Council No. 68 was certified as the exclusive representative
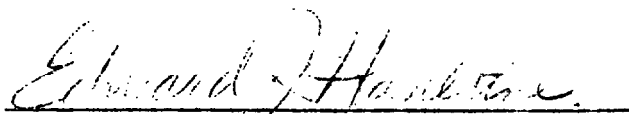
of laborers, truck drivers, heavy equipment operators and mechanics
in the Highway Department and the chief operators, operators I & II,
lab technician, maintenance mechanics, laborers and truck drivers
at the Wastewater Treatment Facilities on April 29, 1980.

3. After examination of the publication which AFSCME alleges as the
basis for their unfair labor practice, the Board cannot find that it
violated the rights of the employees and said publication was within
management's rights to make specific statements of fact which existed.

4. There was no evidence that the publication had in fact been distributed
to voters prior to their entrance into the election area. The alleged
distribution was unsubstantiated by fact.

5. All parties of interest to the election were properly and completely
briefed by representatives of the Board and were provided with sample
ballots which indicated well in advance of the election, the positions
and options on the ballot and these were available to all eligible voters.

6. The voters in the run-off election were fully aware of the procedures
followed in the conduct of the election by the Board, as in the original
election when certain individuals voting had in fact requested and were
given assistance by a representative of the Board on the interpretation
of the ballot. Those individuals were fully aware that this avenue of
ballot interpretation was available.

7. All of the documents prepared for distribution by this Board indicated
that they were the same documents that were provided to the parties to
the election in advance of the actual conduct of election. Evidence
before the Board did not indicate a changed ballot in its original form
but merely a photocopy thereof which was not conclusive.

DECISION AND ORDER

After careful consideration of the facts presented at the hearing, the Board
finds as follows·

A. The original election and the run-off election were
conducted properly and the unfair labor charge filed
by AFSCME is hereby dismissed.

B. The Town's petition to have the election set aside is
also hereby denied.

C. The parties are ordered to conduct good faith negotiations
in accordance with RSA 273-A.

EDWARD J. HASELTINE, Chairman

Signed this 11th day of September, 1980

By unanimous vote. Chairman Haseltine presiding, members Hilliard and Osman
present and voting. Also present, Executive Director, Evelyn C. LeBrun.