



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES

and

TOWN OF WOLFEBORO, PUBLIC WORKS DEPARTMENT

CASE NO. A-0496

DECISION NO. 84-40

APPEARANCES

Representing American Federation of State, County and Municipal Employees

Edward Edwards

Representing the Town of Wolfeboro

Daniel Crean, Esq.

Also present

Gordon A. Reade
Victor Cloutier, Sr.
Paul J. Hurley
Lawrence Swinerton, Jr.

David W. Ridings
Guy Krapp
H.E. Erickson

BACKGROUND

AFSCME, Council 68 (Union) on January 11, 1984 filed a petition for certification of a bargaining unit composed of 34 "employees of the Public Works Department" of the Town of Wolfeboro (Town), including the Garage, Highway, Incinerator, Electric and Water & Sewer divisions but excluding the Director of Public Works, the Superintendent and Directors.

The Town of Wolfeboro, on January 24, 1984 complained to PELRB that the Union had not filed properly since it had not met with the Town to attempt to agree on a unit and pointing out that the Town did not have a "Public Works Department" nor one consisting of the combination of the "divisions" enumerated in the petition. The Town further pointed out that the positions as listed in the proposed unit were not identified by job titles as set forth in the official Town job descriptions, and complained that the Union petition was faulty in several regards but agreed to meet with the Union to discuss the unit as a show of "good faith" on the Town's part. The parties did meet on February 7, 1984 and were unable to reach agreement.

A hearing on the petition was held on March 22, 1984 at the PELRB's office in Concord, N.H. with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

Significant testimony and argument were heard along the following lines: At hearing the Union representative modified the petition to eliminate the position of Secretary thereby reducing the proposed unit to 33 employees. (Modification

accepted). The Town attorney repeated his objections to the petition as filed as not in conformity with PELRB requirements and moved to dismiss the petition. Motion was taken under advisement.

Basically, the Town objected to the proposed unit as being "too broad" in that there was no community of interest among these employees; that the petition sought to combine very different departments contrary to legislative intent; and that the unit included some supervisory personnel, contrary to law.

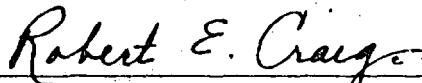
The Union argued that the "supervisors", the chief operator of the incinerator and the chief operator of the treatment plant, did not exercise "significant" discretion under the law and were in fact really "working foremen". Testimony was heard on this question from several of the employees which established that:

- (a) the amount of strictly "supervisory" work of these employees was very little
- (b) all "supervisors" worked directly along with their workers, albeit they have additional duties
- (c) the Town Manager is the supervisor of all employees and works directly with the variously titled "supervisors" of the different town departments except that the Public Works Director is the "supervisor" of the Waste Disposal Department, the Water & Sewer Department and the Garage and clearly not a "working foreman"

DECISION AND ORDER

The PELRB finds a community of interest exists among the following employees and orders the creation of the following unit "Public Works employees of the Town of Wolfeboro" consisting of:

1. all employees of: the Municipal Electric Department (except the Superintendent of Municipal Electric); the Water & Sewer Department; the Waste Disposal Department; the Garage; the Town Office (except the Secretary); and, the Highway Department but not including the Public Works Director;
2. PELRB further orders an election held as soon as practicable.


Chairman, Robert E. Craig

Signed this 4th day of May, 1984.

By unanimous vote. Chairman Robert E. Craig presiding; members Richard W. Roulx and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.