State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SEABROOK EMPLOYEES ASSOCIATION   *
                                 *
              Complainant        *       CASE NO. M-0575:6
                                 *
        v.                       *       DECISION NO. 87-08
                                 *
TOWN OF SEABROOK                 *
                                 *
              Respondent         *
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APPEARANCES

Seabrook Employees Association Representative

    Cora Stockbridge, President

Town of Seabrook Representative

    Gary W. Holmes, Esq., Counsel

BACKGROUND

The Seabrook Employees Association ("Association") filed improper practice charges against the Town of Seabrook ("Town") on August 30, 1986, alleging that the Town violated RSA 273-A:5 by changing the use of annual and sick leave hours without negotiation. The Association specifically alleged that the Town changed its practice as it applied to Blanche B. McCallion, a dispatcher for the Seabrook Police Department. The Association claimed that Dispatcher McCallion cancelled her shift on May 18, 1986 because of illness and was later required to use eight (8) hours of her accumulated annual leave hours since her sick leave hours were exhausted. The Association claimed that this was contrary to past practice, that McCallion should simply not be paid for that time and that since the change was unilateral it violated RSA 273-A:5. McCallion filed a grievance which was denied by the Board of Selectmen.

The Town admitted the facts as alleged in the complaint but denied it had violated the past practice of the Town arguing it has taken the same action in numerous other cases. The Town argued that the complaint should be dismissed since it claims no harm to the employee and is therefore not substantial.

FINDINGS OF FACT

Dispatcher McCallion has been paid for the time she was out sick (40 hour week) and her accumulated annual leave was reduced by eight (8) hours.

Evidence introduced by the Association (see Association Exhibits) and testimony established that McCallion had been permitted to take a "short week" (pay for less than 40 hours) on at least two previous occasions without using annual leave and on at least one such occasion her sick leave had run out.

The Association also established that another employee (Mary Stewart) had been paid for less than 40 hours, with no such leave, and had not been required to use annual leave as a substitute.

Testimony by Town Selectmen's clerk revealed that the policy of taking annual leave away after sick leave was used up was applied to other employees but that McCallion and Stewart's records were from the Police Department and had apparently "slipped" through.

Testimony by two members of the Board of Selectmen emphasized that the policy of using annual leave in this way has been in place a long time, at least since 1979.
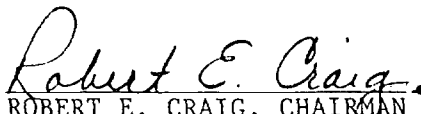
RULINGS OF LAW

The evidence and testimony clearly indicate the Town wants a policy of using annual leave when sick leave has run out. However, the facts of the case reveal that this policy is not uniform throughout the Town departments since it has not been practiced in the Police Department. The record indicates that the past practice in the Police Department allows employees to be out sick, not to be paid, and not to have to use their accumulated annual leave.

Since this has been the practice in the Police Department then the employees of that department must be allowed to follow this practice until an agreement has been reached between the Association and the Town. No unilateral changes affecting the Police Department can be permitted.

DECISION AND ORDER

The PELRB finds the Town of Seabrook guilty of an unfair labor practice violating RSA 273-A:5, I, (e) in failing to negotiate changes in past practice.

The PELRB further orders the Town to restore eight (8) hours of annual leave to Blanche McCallion and to deduct eight hours for a mutually agreeable pay period.

ROBERT E. CRAIG, CHAIRMAN

Signed this 2nd day of February, 1987.

By unanimous vote. Chairman Robert E. Craig presiding, members James Anderson, Richard Molan, Seymour Osman and Richard Roulx present and voting. Also present Evelyn C. LeBrun, Executive Director.