



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 93, LOCAL
#365

Petitioner

v.

CITY OF NASHUA

Respondent

CASE NO. A-0410:11

DECISION NO. 87-53

APPEARANCES

Representing American Federation of State, County and Municipal Employees,
Council 93, Local #365:

James C. Anderson, Field Representative

Representing the City of Nashua:

Steven A. Bolton, Esq., Counsel

Also appearing:

Dennis R. Goudreau, Pres., Local 365
Michael Levesque, Local 365
L. Peter Benet, Public Works Director
Marilyn Greenwood, Personnel Director

BACKGROUND

The American Federation of State, County and Municipal Employees, Council 93, Local #365 ("Union") filed charges of unfair labor practices against the City of Nashua ("City") on April 23, 1987 alleging breach of RSA 273-A:5, I, (e) and (h).

The Union alleges that a collective bargaining agreement was entered into in October of 1984 and continues in effect. The Union alleges that the City accepted outside bids for sweeping services from companies providing such services, on April 2, 1987. The Union further alleges that during negotiation and mediation the City negotiated over sweepers' pay but never informed the Union of the contracting out of sweeper services, constituting a refusal to

bargain in good faith as required under RSA 273-A:3, I. The Union asks that PELRB find the City guilty of an unfair labor practice and "Order a cease and desist regarding the contracting out of bargaining unit work;" (complaint).

The Union also alleged that the City had breached the collective bargaining agreement. No substantiation was offered for this in the complaint.

The City, in its answer, denied it has refused to negotiate in good faith and denies that it had breached the collective bargaining agreement. The City admitted that it sought and received bids for private contractors for sweeping city streets and parking lots. The City further admitted to participating in continuing negotiations over pay rates and job classifications but denies it ever misled the Union or misrepresented its position. The City also denied that it intends to change any condition of employment.

A hearing was held on August 11, 1987 at the PELRB offices in Concord, N.H. with all parties represented.

THE HEARING

A. Recusal issue:

At the start of the hearing the City moved to have Mr. James Anderson, representing the Union, recused on the grounds that he is a (labor) representative on the board and also because of some comments he made during negotiations.

Testimony was received from the Personnel Manager of the City to the effect that Anderson had used the expression "inside track" (at PELRB) at one point during negotiation.

A transcript of the relevant negotiation session, of the Personnel Manager's notes, revealed that the comment was made in the context of a discussion of the extent to which the PELRB would review arbitrator's awards.

The PELRB ruled (unanimous) that no conflict of interest had been shown and that recent additions to RSA 273-A:2 refer to direct and personal interest in actions taken as a board member, not to appearances before the board.

B. Deficient Filing Issue:

The City also objected to the Union's complaint alleging that it was deficient since there were no specifics in the complaint dealing with the breach of contract charge.

The Union answered saying that this referred to the negotiations over sweeper's wages.

Motion was taken under advisement and later the PELRB (unanimous) ruled that the charge of breach of contract was not appropriate and ordered the complaint modified to exclude this part of the complaint.

C. Unfair Labor Practice: failure to negotiate in good faith

Findings of Fact:

The Union established, through a member of their negotiating team, that the City had never brought forward its proposals for private contracts for some sweeping in the City nor had the subject of the impact of such activity ever been negotiated. (Negotiations took place from January, 1986 to May of 1987).

The Union, in its testimony, established that it learned of the private contracting on April 2, 1987. The Union subsequently went to the Mayor and the Director of Public Works and were told that more trucks were needed than the City had.

The Union subsequently reported the situation to Council 93, was advised and did file unfair labor practices on April 23, 1987.

The Union negotiator (and President of Local) testified that the private sweepers were working the same streets as city workers do and that some (unspecified) work was done at times when the City workers would not be paid overtime.

The Union negotiator testified that he didn't remember this issue of private contractors being brought up at negotiation, or the impact of same.

The Union negotiator testified that in April of 1987 the two sides were at impasse, waiting for the factfinder's report and no negotiating sessions were scheduled.

The private sweeping began in May of 1987 and the contract agreement was reached in the same month.

The Union testified that in 1986, the City had five (5) sweepers available, three (3) steady sweepers and two (2) spare sweepers and that in 1987 the City had seven (7) all together.

The Union negotiator testified that in his opinion the private sweepers meant less overtime for City employees and less money for other jobs.

The Union negotiator testified he worked the same amount as sweeper in 1987 as in 1986.

The Director of Public Works testified:

1. There were several areas of work where the City now hired only private contractors, some areas where only City workers and some areas where mixed.
2. From July 1, 1985 to June 30, 1986 - 3935 hours were spent sweeping for July 1, 1986 to June 30, 1987 - 5085 hours were spent sweeping.
3. Overtime for City employees increased to 1,000 hours to a point where (at least regular sweepers) employees didn't want more hours.

4. The City simply wanted more total sweeping.
5. First thoughts of hiring private sweepers arose in Spring of 1985 and it took until March of 1987 to ask for bids.
6. The Union President/Negotiator had never been asked to sweep overtime.
7. When private contractor is hired, they decide what days will work, etc.

Note: With respect to the City's request for Findings of Fact and Rulings of Law: all are granted except #5 in that PELRB knows of negotiations from January 1986 on.

RULINGS OF LAW:

1. The City did not have to negotiate its decision to hire private contractors to do additional sweeping since this comes under the "managerial policy" exclusion of RSA 273-A:1, XI.
2. But the City was never asked to bargain the impact of its decision on the "terms and conditions of employment" of unit members and so did not commit an unfair labor practice.

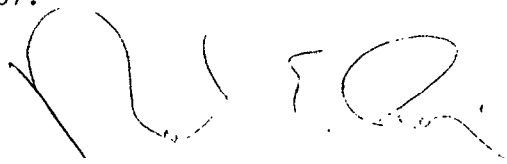
If the City refused or refuses to negotiate the impact of its decision to hire private contractors on its unit members it would be guilty of an unfair labor practice.

3. The failure of the City to clearly communicate its plans and the failure of the Union its desires is a poor illustration of two parties seeking "harmonious relationship" under the law.

DECISION

- A. The charge of unfair labor practices for failure to negotiate in good faith is hereby dismissed.
- B. The parties are urged to meet and discuss the situation with a view to reaching an amicable accord for future situations of this kind.

Signed this 3rd day of September, 1987.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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