



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DURHAM/UNH FIREFIGHTERS, LOCAL 2253, IAFF	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. U-0612:1
	:	
DURHAM/UNH FIRE DEPARTMENT, UNIVERSITY SYSTEM OF N.H.	:	DECISION NO. 87-63
	:	
Respondent	:	

APPEARANCES

Representing the Durham/UNH Firefighters, Local 2253, IAFF:

Robert T. Clark, Esq., Counsel

Representing the Durham/UNH Fire Department, University System of N.H.:

Nicholas DiGiovanni, Jr., Esq., Counsel

Also appearing:

Gary W. Wulf, Vice Chancellor, University System of N.H.
 Robert P. Wood, Fire Chief, Durham/UNH Fire Department
 Hubert Matheny, IAFF
 Dennis Pease, Jr., IAFF

BACKGROUND

On April 9, 1987, the Durham/UNH Firefighters, Local 2253, IAFF, (Local) filed charges of unfair labor practice against the Durham/UNH Fire Department, University System of N.H. (University) for denial of benefits to firefighters which are enjoyed by all other UNH/Durham employees, in violation of RSA 273-A:5, I, (a), (b) and (c), in that such action by the University was coercive, interfering with the rights guaranteed under 273-A and had the effect of discouraging membership in an employee organization.

On December 17, 1986, President of the Local, Dennis Pease, contacted Gary Wulf, Vice Chancellor of Resource Administration for the University and informed him that the Local would be petitioning for a bargaining unit composed of all full-time firefighters and captains. At that point, no agreement or process had been pursued to form the referenced bargaining unit under the provisions of RSA 273-A:8.

On December 18, 1986, Gary Wulf by letter addressed to Dennis Pease acknowledged the Petition for Certification and indicated the necessity to meet to discuss composition of the unit and the process to be followed before PELRB. Further, in his letter stated, "...In view of your indication of a desire to bargain collectively regarding your wages, hours and conditions of employment, effective immediately all changes in such conditions, to include also general increases, merit increases, and range movement will be held in abeyance until the process runs its course... We look forward to seeing you on 1/14/87".

On January 16, 1987, the Local filed a Petition for Certification with PELRB for the proposed bargaining unit. The process for creation and certifying a bargaining unit continued and resulted in Local 2253, IAFF being certified as the bargaining agent on August 28, 1987.

Hearing on the charges was held on September 22, 1987.

The University by its Counsel, Nicholas DiGiovanni stated that the letter sent to Dennis Pease was to ensure laboratory conditions for an election would be maintained and that no specific benefits had been withheld; no wage or benefit increases had been denied to firefighters because of their petition. The University in its testimony went to great length to point out the process followed in wage and merit increases for staff, budgetary processes and fund allocations. They further contend that the Wulf letter was directed to Dennis Pease and did not receive any circulation among the firefighters.

Local 2253 by its Counsel, Robert Clark argued that letter by its issuance within 24 hours notification of the Local's intent to organize was intended to be coercive and discourage members of the Durham Fire Department from organizing and further that the denial of benefits or benefits held in abeyance - prior to certification of an exclusive representative is contrary to RSA 273-A:5 I (d).

The issue in this case is whether the letter of December 18, 1986 by Gary Wulf to Dennis Pease which purports to withhold or hold in abeyance any wage or merit increases and other benefits and changes unilaterally conditions of employment prior to PELRB Certification constitutes a violation of RSA 273-A:5 I (d).

FINDINGS OF FACT

1. No official bargaining unit was in existence at the time of the December 18th letter.
2. Certification of the Unit under RSA 273-A did not occur until August 28, 1987.
3. Testimony at the hearing evidenced that letter and resulting actions by the University did deny certain benefits to the firefighters earned in July 1987 prior to the certification of the unit which cannot retroactively be negotiated.
4. The Board finds the letter to be coercive in tone and nature and untimely as there had been no resolution of the bargaining unit.

DECISION AND ORDER

- I. The Board finds the University guilty of improper labor practices under RSA 273-A:5, I (a), (b), (c).
- II. The Board orders the University to treat the firefighters in all respect as to wages, merit increase and fringe benefits as other staff personnel up until the time of certification of the bargaining unit, August 28, 1987.



EDWARD J. HASELTINE, Chairman

Signed this 5th day of November, 1987.

By unanimous vote. Chairman Edward J. Haseltine presiding. Present and voting, Members Seymour Osman and Daniel Toomey. Also present, Executive Director, Evelyn C. LeBrun.