



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LOCAL 2253, INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS

Petitioner

v.

DURHAM-UNIVERSITY OF NEW HAMPSHIRE
FIRE DEPARTMENT

Respondent

CASE NO. F-0120:1

DECISION NO. 89-15

APPEARANCES

Representing Local 2253, I.A.F.F.:

Robert T. Clark, Esq., Counsel

Representing Durham-University of New Hampshire Fire Department:

Nicholas DiGiovanni, Jr., Esq., Counsel

BACKGROUND

This is an Unfair Labor Practice complaint arising out of an allegation of a violation of RSA 273-A:5 (I) (a), (c) or (e) in that it is alleged that the Durham-University of New Hampshire Fire Department failed to grant pay increases given to other University staff on July 1, 1988 and did restrain, coerce or otherwise interfere with employee rights for the purpose of discouraging union membership by such activity and its course of conduct and further refused to bargain or deal with the bargaining representative.

The facts in the matter are not in dispute, the parties having entered into a Stipulation of Facts. On August 22, 1988, the union filed an Unfair Labor Practice complaint with the Public Employee Labor Relations Board alleging that the University System of New Hampshire violated the above captioned statutes when it granted a 2.5% across the board pay increase and benefits to the employees of the University of New Hampshire but did not provide such increases to firefighters.

The PELRB on August 28, 1987 certified the union as a representative of firefighters of the Durham/UNH Fire Department. In doing so, it created a unit of firefighters and captains in the fire department which is a joint undertaking of the University of New Hampshire and the Town of Durham. The University of New Hampshire appealed this determination because it believed that the unit was inappropriate and that captains should not be included in the unit even if the unit were appropriate. This determination was appealed to the New Hampshire Supreme Court and the unit election was held resulting in the union being selected as exclusive bargaining representatives.

The union requested firefighters be treated the same as other staff and that they receive the 2.5% increase and consideration for merit increases prior to June 30, 1988 (i.e. for fiscal year 1988). This the University refused to do. The union then agreed to a proposal by the University that firefighters be considered for merit increases for fiscal year 1988 if the union agreed to waive its right to bargain for fiscal year 1988 compensation and not to file any charges regarding increases. The University agreed to pay the fiscal 1988 increases which were paid. However, the University refused to grant firefighters an additional 2.5% across the board increase in wages granted to other, non-unionized staff for fiscal year 1989. The union contended that the firefighters should be treated the same as other staff for fiscal year 1989 but the University refused to do so, stating that it did not believe it should or could be required to treat the firefighters the same as other staff because of the certification and appeal of the bargaining unit. The firefighters have not received any pay increases from July 1, 1988 to the present.

Case was submitted to PELRB by an agreed Stipulation of Facts and the submission of briefs.

The Supreme Court of New Hampshire rendered its decision in the matter which stated that the unit established by the PELRB was appropriate if captains are excluded. (See Appeal of University System of New Hampshire, N.H. Supreme Court, No. 87-376, December 30, 1988 ____ N.H. ____).

FINDINGS OF FACT AND RULINGS OF LAW

The PELRB adopts the Stipulation of Facts entered into by the parties.

On the matter before the Board, the Board rules in favor of the University.

Briefly, the University is not required to bargain pending its appeal of the unit determination. This appeal, although pending for a long period of time, comes under the rule of the Supreme Court Decision in Appeal of University System of New Hampshire, 120 NH 853, 424 A 2nd 194 (1980) which states that an employer is not required to negotiate pending an appeal on the question of a bargaining unit determination and its refusal to do so is not unfair labor practice. While the University and the union agreed to waive certain rights for the 1988 fiscal year, which waiver was within their prerogative to do, neither party was required to enter into such a waiver for the 1989 fiscal year. Because the parties were waiting in good faith for a decision of the New Hampshire Supreme Court on unit determination, and because the University could have been subject to the allegation that it was attempting to influence the workers had it granted a unilateral pay increase, notwithstanding the fact it would then be required to negotiate after certification (assuming that it lost the Supreme Court appeal), it would be presented with a dangerous choice were it to negotiate. This Board has in the past stated that such unilateral pay increases are not required and, indeed, such increases have been the subject of complaint. Faced with the prospect of potentially having to negotiate for fiscal year 1989, the employer exercised its right to refrain from granting any increase or enter into any stipulation pending the Supreme Court Decision. Now that the Supreme Court Decision has been received and the unit has been finally determined, the parties are required to negotiate and, hopefully, will do so with an aim toward reaching an agreement. Whatever the form of that agreement, if it is forthcoming, the workers will then receive whatever increase may be negotiated, which in fact may be made retroactive to the beginning of the fiscal year.

It is impossible to find that the employer, exercising its rights not to bargain pending resolution, could have violated RSA 273-A:5 (I) (a), (c) or (e). While the action may have been firm and the result deemed harsh, all actions of the employer in this case were within its rights and therefore no violation of the law can be found. However, the parties are now required to bargain, and the Board commends to them the process which requires that they enter into negotiations forthwith.


ORDER

Consistent with the above decision, the Board issues the following order:

1. The Board denies any Unfair Labor Practice complaint in this case.
2. The parties are ordered to enter into negotiations forthwith and report all results thereof to the PELRB.

So Ordered.

Signed this 23rd day of February, 1989.


EDWARD J. HASELTINE
Chairman

Chairman Edward J. Haseltine present and voting. Also present, members Seymour Osman, Richard W. Roulx and James C. Anderson. All concurred. Also present Executive Director, Evelyn C. LeBrun.