



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER PUBLIC ADMINISTRATORS ASSOCIATION :

Petitioner :

v. :

RICHARD E. LAK, CITY MANAGER :

Respondent :

CASE NO. M-0574:3

DECISION NO. 89-64

MOTION FOR REHEARING

On August 17, 1989 PELRB issued Decision No. 89-55 in which the majority vote found that (A) the Dover City Council sets the pay or compensation of all department heads, authority under City Code 3-3 sub "B"; (B) the former City Manager exceeded his authority in settling a grievance affecting future wage increases without advising the Council; (C) the notice of termination of the contract was in accordance with the agreement; (D) no unfair labor practice on the part of the City with respect to disposition of wages in the grievance settlement; and, (E) Ordered the parties to negotiate all issues in this matter and (F) report compliance and progress within 30 days and every 15 days thereafter if agreement is not reached.

Counsel for DPAA filed a Motion for Reconsideration on several issues; i.e., manner in which he learned of PELRB's decision, that by the terms of the majority decision, DPAA was denied benefits of the resolution of the grievance procedure, errors as a matter of law by (a) not finding a breach of the agreement, (b) not recognizing the City Manager's ability to bind the Council by contract, (c) in finding the City Manager form of government, as expressed in the Charter, allows the Council to set salaries of department heads, (d) that any attempt to give notice of intent to negotiate a new contract negates previous grievance settlements which terms extend beyond a fiscal year end, (e) ignoring the N.H. General Court's rationale for adherence to a set grievance procedure, (f) and that material subsequent actions of the Council did not constitute ratification of the Manager's decision. He also asserted that the substance of the decision was unreasonable in its findings of fact and as additional grounds for reconsideration, the City Manager's appointment of a PELRB member to the Housing Authority during the pendency of the decision was improper and acts to invalidate the PELRB decision pursuant to the conflict of interest provision of 273-A.

Counsel for the respondent objected to the Motion for Rehearing stating that the decision was reasonable and correct as a matter of law and that the PELRB member was appointed on June 14, 1989 upon nomination and recommendation of the Dover Housing Authority to serve the balance of an unexpired term due to death of one of its members, that the service of the Authority's members is community service for which they receive no compensation, and that no good reason for reconsideration was given.

PELRB after reviewing the record, its majority and dissenting opinion and conflict of interest issue, GRANTS the Motion for Rehearing. Rehearing in this matter will be scheduled as expeditiously as possible.

Signed this 28th day of September, 1989.


EDWARD J. HASELTINE
Chairman

By unanimous vote: - Chairman Edward J. Haseltine presiding. Members present and voting, Richard E. Molan and Seymour Osman. Also present, Executive Director, Evelyn C. LeBrun.