



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

RYE BOARD OF SELECTMEN

Complainant :

v.

RYE TOWN EMPLOYEES ASSOCIATION/
TEAMSTERS LOCAL #633

Respondent :

CASE NO. M-0594:3

DECISION NO. 90-55

APPEARANCES

Representing Rye Board of Selectmen:

Robert R. Tawney, Chief Negotiator

Representing Rye Town Employees Association/Teamsters Local 633:

Thomas D. Noonan, Business Agent

Also appearing:

John J. Coffey
Janet Thompson
Sarah T. MacGregor
Paul Paradis

BACKGROUND

Robert R. Tawney, negotiator for the Town of Rye appealed the decision of the hearing officer in Case No. M-0594:3, Decision No. 90-25 which decision included the position of Mosquito Control Officer in the certified bargaining unit.

A hearing was held on June 7, 1990 at the PELRB office in Concord, New Hampshire.

As an opening statement representative Noonan for the bargaining unit stated the union would stand on the testimony presented to the hearing officer.

Tawney for the Town restated the town's position presented to the hearing officer emphasizing again that things had changed since the Town originally agreed to the inclusion of this position in the bargaining unit, instead of the two town's participating in the Mosquito Control project there were now eight towns and further that the incumbent is a professional and should be excluded and should be considered as an independent contractor and excluded.

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The Town argued that they did not have control over the position but only served as a focal point for administration for the consortium and offered exhibits in support of their position and that the change occurred in '88 when the consortium was developed and further agreed the position at best was a part-time position for the Town of Rye and did not meet the 51% requirements set forth in PELRB decision No. 89-60 and further that the Town of Rye could not exercise its managerial rights over their position.

The Town admitted that the position was headquartered in Rye Town Offices that the position was carried on the Town's payroll and the separate participating towns reimbursed the Town of Rye on a formula basis, that benefits were scheduled as were other town employees, insurance coverage was carried by the Town of Rye.

Testimony was offered by Jack Tobey, Chairman of Selectmen, Janet Thompson Town Administrator also Selectmen John J. McCaffery.

Sarah MacGregor the incumbent testified that she handled another project specifically for the Town of Rye, the Saltmarsh project, the paycheck was issued by the Town of Rye for her total pay with the customary deductions taken by the Town and further she was noticed and attended Department Head meetings for the Town.

FINDINGS OF FACT

After considering the oral testimony, documents and exhibits offered the Board finds as follows:

1. By inclusion of this position in the bargaining unit, management rights are not diluted as management participated in control of the project as a consortium member, control of the office space provided and required attendance of staff meetings.
2. PELRB has not adopted the 51% participating requirements to qualify as permanent part-time position. The case cited No. 89-60 dealt was an individual case judged on its merits and cannot be concluded as a policy not subject to change.
3. The self-felt community of interest expressed by the incumbent was unrefuted.
4. The majority of office time is spent in the office provided by Rye and some by the Town of Exeter, field work is planned and directed principally from the Rye office.
5. The findings in decision No. 90-25 are hereby incorporated in this decision.

ORDER OF THE BOARD

The Decision of the hearing officer No. 90-25 is hereby REAFFIRMED.

Signed this 28th day of June, 1990.


EDWARD J. HASELTINE, Chairman

Voting Seymour Osman. and E. Vincent Hall. Chairman Edward J. Haseltine abstains. Also present, Executive Director, Evelyn C. LeBrun.