



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PROFESSIONAL, ADMINISTRATIVE AND
TECHNICAL EMPLOYEES OF DERRY

Complainant

v.

TOWN OF DERRY

Respondent

CASE NO. M-0626:1

DECISION NO. 90-73

APPEARANCES

Representing Professional, Administrative and Technical Employees of Derry:

Malcolm P. MacIver, Captain, Police Department

Representing Town of Derry:

Harry S. Gale, Consultant

Also appearing:

Jack Dowd, Town of Derry
Ed Garone, Town of Derry
Glenn Hunter, Town of Derry
Ronald Gagnon, P.A.T.E.
George Sioas, Town of Derry
John M. Foreman, Town of Derry
Cissy Taylor, Union Leader
Rodney Bartlett, Consultant

BACKGROUND

Hearing on Professional, Administrative and Technical Employees of Derry's (PATE) request for the issuance of a Cease and Desist Order against the Town of Derry (Town) was held on August 9, 1990. The issue is the proceedings now ongoing by the Town Administrator in the discharge of the Superintendent Water/Waste Water under the Town's personnel rules.

Captain Malcolm MacIver representing PATE offered testimony that the Superintendent's case was being processed under the Town's personnel rules and should more properly be a matter for the grievance procedures available to other Town employees who are in recognized bargaining units; that PATE was in negotiations with the Town for its first contract after becoming a properly certified bargaining unit on June 1, 1990; and that an agreement between the Town and PATE which deals

with benefits afforded to other Union employees should be interpreted to include PATE members and the Superintendent's case and processed under that grievance procedure which results in final and binding arbitration. He stated that he as the representative of PATE had been denied the right to represent one of its members (Superintendent) before the Personnel Hearing Board.

The Town by its representative Harry Gale testified that the matter of the Superintendent's discharge was properly being processed under the Town's personnel rules which has not been completed, that no irreparable harm was caused the Superintendent as he is being paid pending the outcome of the hearing and that the Town is the one being harmed by the costs associated with the disclosure procedures and that the complainant's charge is not specific as to what section of 273-A is being violated.

DECISION AND ORDER

After considering the parties testimony and exhibits, the Public Employee Labor Relations Board orders as follows:

1. PATE'S petition for a Cease and Desist Order is DENIED.
2. The public interest is not jeopardized by the ongoing action.
3. The claimant is not suffering irreparable harm as all available remedies have not been exhausted.



EDWARD J. HASELTINE, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 15th day of August, 1990.

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Richard E. Molan, Esq. present and voting.