



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

RYE NEW HAMPSHIRE MUNICIPAL
EMPLOYEES ASSOCIATION c/w
TEAMSTERS LOCAL 633 of NEW HAMPSHIRE

Complainant

v.

TOWN OF RYE, NEW HAMPSHIRE

Respondent

CASE NO. M-0594:5

DECISION NO. 90-99

APPEARANCES

Representing Rye N.H. Municipal Employees Association c/w Teamsters:

Thomas D. Noonan, Business Agent

Representing Town of Rye:

Robert Tawney, Chief Negotiator

Also appearing:

Paul Paradis, Teamsters
Sarah MacGregor, Teamsters
Jack Tobey, Selectmen
John J. Coffey, Selectmen
Janet Thompson, Selectmen
Susan Elsea, Former Selectmen
Bonnie McDermott
Diana Eddis-Diggs
George Powell

BACKGROUND

On June 28, 1990 the Rye N.H. Municipal Employees Association c/w Teamsters Local 633 of New Hampshire filed an improper practice charge against the Town of Rye and its Board of Selectmen alleging that on or about June 12, 1990 the Town of Rye, Board of Selectmen did violate Sarah MacGregor's rights guaranteed under RSA 273-A by discriminating against her with regard to eliminating her position of Mosquito Control Director within the certified unit. Attached to the ULP was a letter from the Board of Selectmen to Ms. MacGregor advising her that effective July 1, 1990 the Town would no longer perform certain functions for the Seacoast Area Mosquito Control Commission, such as payroll, benefit deduction and other insurance coverage and that the Town of Rye's vehicles would only be used in the Town of Rye not for transportation purposes to other towns.

The Town responded to the charge stating the charge lacked specifics in its allegations, denied any violation of 273-A:5, I, (b), (c) and (d). Reference was made to its right to request a modification of a bargaining unit, (subject of June 7th hearing) and its right to appeal a decision of PELRB if it so chooses. (Pub 205)

Hearing in this matter was held on September 10, 1990 at the PELRB office in Concord, New Hampshire all parties present.

Representative of the Complainant reviewed the chronology of the case beginning with the initial hearing on October 12, 1989, on the modification of the unit, the Hearing Officer's decision (90-25), Selectmen's letter to Ms. MacGregor of June 12, unfair labor practice charge filed by union on June 26, 1990, grievance filed by union July 31, 1990, and the pre-hearing conference August 1, 1990.

The Town argued that the actions taken by the Selectmen in discontinuing to provide office space and accounting services for the area Mosquito Control Program, which it had provided for several years; i.e., paying Ms. MacGregor's salary & doing her payroll, insurance and other benefits and then billing and being reimbursed by the several participating towns on a pro-rata basis, was not retaliatory actions.

The Town's representative argued at length regarding the Town's rights to request modification of the bargaining unit to eliminate the Mosquito Control Officer position (which was not granted by PELRB), that MacGregor was and is currently an employee of the Town of Rye for that portion of her time spent on Mosquito Control work for the Town of Rye, (eight (8) hours per week) and is being paid accordingly. The Town needed additional space to perform certain tax functions and needed the space used by the Area Mosquito Control Commission. She offered minutes of Seacoast Mosquito Control Commission of November 30, 1989 where discussion took place regarding the availability of office space, the Selectmen meeting of March 29, 1990 again dealing with the space problem and finally argued that under the management's rights clause negotiated in the contract, Article IV, Paragraph 4.02 2, which in effect states, in part, that management can close or liquidate an office, branch or facility, relocate, reorganize or combine facilities for budgetary or other reasons gave them the right to take the action.

The Chairman of the Selectmen also testified that the action was not retaliatory, that the space was needed, that certain questions had been raised by the Workman's Compensation carrier about the project, and that the clerk in the Selectmen's office who had been responsible for handling the work of the Mosquito Control Commission and for the area towns had left the Town's employ further complicating the process.

The Chairman of the Selectmen in response to a question from the Board stated that the discontinuance of services was not discussed with other members of the Seacoast Mosquito Control Commission which is comprised of eight towns.

DECISION AND ORDER

After considering the oral testimony and written exhibits, PELRB finds that while the timeliness of the Town's actions in vacating the space and the administrative functions provided, the Area Mosquito Control Commissioner raises serious questions as to the real purpose, there is insufficient, unrefuted testimony to find improper practice.

The Complainant has failed to prove that the actions taken by the Rye Board of Selectmen were retaliatory therefore the Board GRANTS the Town's Motion to DISMISS.

The case is hereby DISMISSED with the suggestions to the parties that any future action of this nature be the subject of discussion between the parties.

Signed this 20th day of September, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard E. Molan, Esq. and E. Vincent Hall present and voting. Also present, Executive Director, Evelyn C. LeBrun.



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Hearing in this matter was held on September 13, 1990 at the PELRB office in Concord, New Hampshire all parties present.

Representative of the Complainant reviewed the chronology of the case beginning with the initial hearing on October 12, 1989, on the modification of the unit, the Hearing Officer's decision (90-25), Selectmen's letter to Ms. MacGregor of June 12, unfair labor practice charge filed by union on June 26, 1990, grievance filed by union July 31, 1990, and the pre-hearing conference August 1, 1990.

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