



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, COUNCIL 93, LOCAL 1801/
PELHAM POLICE UNIT

Complainant

v.

TOWN OF PELHAM

Respondent

CASE NO. A-0465:13

DECISION NO. 90-115

APPEARANCES

Representing AFSCME, Council 93, Local 1801/Pelham Police Unit:

James C. Anderson, Staff Representative

Representing Town of Pelham:

Gary W. Wulf, Consultant

Also appearing:

David F. Barker, Town of Pelham
Dennis Lyons, AFSCME, Pelham Police
Evan E.J. Haglud, Pelham Police
Michael A. Ogiba, Pelham Police
Gary Fisher, Pelham Police
Kevin Barry, Pelham Police

BACKGROUND

On May 3, 1990, AFSCME, Council 93, Local 1801/Pelham Police Unit (AFSCME) filed an improper practice charge against the Town of Pelham (Town) and Peter Flynn, Chairman of the Board of Selectmen charging that the Town by its selectmen failed to properly present the factfinder's report, more specifically with respect to cost items which must be submitted to the voters in accordance with RSA 273-A:5 (e). The charge further alleges that the parties had negotiated an agreement which had reached impasse and following failure to reach a settlement, the issues were submitted to a factfinder.

AFSCME charges that during an initial meeting and a subsequent re-convened meeting of the voters that the factfinder's report was not adequately presented to the voters as required instead there were specific warrant articles submitted requiring specific appropriations to fund the negotiated agreement and also to fund in accordance with the factfinder's report. They further alleged that the factfinder's report was never presented to the towns people for action nor was it available to the voters except in a very obscured location and had not really been discussed by the parties at the meeting of the voters.

The requested relief was an order of the PELRB to the Town that a special town meeting be called for the purpose of compliance with 273-A and advise the Towns' residents at the special town meeting of the factfinder's findings and recommendations.

The Town's response to the above filing was submitted by Gary Wulf, who represented the Town in this matter and in response submitted the following comments; (1) Should the public employer reject the neutral factfinder's report, the Town's representative stated that it was cognizant of its obligation under RSA 273-A:12, I, II and III to present the factfinder's recommendations to the legislative body, the voters, at the town meeting and the Board of Selectmen had done so at the March 1990 meeting; (2) The Town had at no time refused to meet and negotiate with this local union and cited the fact that the Town had proceeded through negotiations, mediation and factfinding and were at this moment of filing were awaiting appointment of a third stage mediator to address the two issues still in dispute and further stated that an article calling for funding in a specific amount based upon the factfinder's recommendation was presented to the voters without support of the Board of Selectmen. The article failed to pass.

A second article was presented to the voters on the warrant relating also a factfinder's report asking for another specific amount less than the original amount and that also failed to pass.

They alleged that the copies of the entire factfinder's report was available before the Town meeting at the Selectmen's office and at the Town meeting for any voters who wish to review the specifics of the factfinder's report.

The Town also alleged that it did not violate the N.H. Public Labor Law by its actions, nor had it violated any rule or regulations of the PELRB. The Town requested dismissal of the charge based on the above findings.

Hearing in this matter was held on June 26, 1990 at the PELRB office in Concord, New Hampshire.

Both sides further attempted at the hearing to defend their positions first that the report had not been presented in proper form to the voters and second the Town agreed that the factfinder's report had to be submitted and that it had been properly submitted and cited the two articles contained in the meeting warrant.

Witnesses of the Police Department testified that the Selectmen spoke against the factfinder's report and also testified to the actions taken by both parties at the Town meeting.

The Town indicated in its testimony that there were ten copies of the factfinder's report along with the other articles contained in the warrant on a table alongside of the wall and further testified that a full factfinder's report had been published in the state line newspaper a local weekly which constituted notice to the voters of the factfinder's report.

Videotapes of the Town meeting were offered in evidence which indicated presentation of the issues both pro and con of the specific issues contained in the factfinder's report.

It is noted here that the warrant articles which were submitted as the Town's exhibit indicated that they were published in the local paper the state line express and had been discussed between the parties prior to the conduct of the meeting.

FINDINGS OF FACT

After reviewing the testimony and the exhibits offered, PELRB makes the following findings:

1. The contractual process was followed by the parties including mediation and subsequent factfinding. The factfinder's report was submitted to the parties, accepted by the Union but rejected by the Selectmen.
2. There is no substantial evidence before us to indicate that the factfinder's report as submitted was highlighted or discussed in detail at the Town meeting other than by several individuals making reference to it.
3. We find that the report itself was laid on a table at the back of the meeting room and no reference was made at the meeting that it was available to the voters nor was it specifically cited other than the total dollar volume as to the factfinder's recommendation. It is a requirement that the factfinder's report be presented to the Legislative body in accordance with 273-A:12, II, it is inherent in the process that the factfinder's report should be highlighted insofar as the cost items are involved. While limited discussion took place on the floor by various individuals participating at the microphone, as indicated by tapes submitted in evidence, nowhere did the responsible authorities of the Town make reference as the specific cost items and its implication referred to by the factfinder.
4. While the presentation of a summarized portion of the factfinder's report was available, its presentation at best can be considered minimal. It is the opinion of the PELRB that when submitting a factfinder's report required under 273-A:12 a detailed explanation should be made of the recommendations and the subsequent implications the report might have on the cost items before the voters.
5. We find the factfinder's report was not generally made available to the voters other than incidentally and find that the report was available upon request in the Selectmen's office.
6. It is the opinion of this Board that rather than a passive availability of the factfinder's report it should be actively presented, concisely and in detail as to the cost items before the voters. We find this not to be the case. This Board has been advised prior to the date of this decision and subsequent to the hearing that the parties have reached an agreement and are in the process of signing, therefore the question of this Board ordering a special town meeting becomes MOOT.

ORDER

The Board declines to order a special meeting of the voters for the purpose of considering the factfinder's report above in question based on the fact that the issue is now MOOT.

The public employer through and by its representative are hereby ordered in all future instances where factfinder's reports are the results of the negotiations that the detail of the cost items be made available to the voters both in discussion and written form. We find the Town guilty of an unfair labor practice in failing to properly present the factfinder's report to the voters.

Signed this 30th day of October, 1990.


EDWARD J. HASELTINE
Chairman

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