



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SALEM BROTHERHOOD OF FIREFIGHTERS,
LOCAL 2892, IAFF

Complainant

v.

TOWN OF SALEM AND
JOSEPH GAGNON

Respondent

CASE NO. F-0116:11

DECISION NO. 92-09

APPEARANCES

Representing Salem Brotherhood of Firefighters, Local 2892, IAFF:

Glenn R. Milner, Esq.

Representing Town of Salem:

Robert P. Leslie, Esq.

Also Appearing:

Kevin J. Breen, President, Brotherhood of Salem Firefighters
Dennis M. Covey, V.P. Local 2892
John Van Gelder
Joe Gagnon, Town of Salem
Bruce Breton
John Gagnon
Barry M. Brenner, Town of Salem
Chief Donald P. Bliss, Town of Salem
Dick Gregory
Susan Carbon
Matt Upton

BACKGROUND

On or about March 1, 1991, the Salem Brotherhood of Firefighters, Local 2892, IAFF (Firefighters) by and through its counsel, Glenn R. Milner, Esq. filed improper practice charges (ULP) against the Town of Salem (Town) and Selectman Joseph Gagnon alleging a violation of RSA 273-A:5, I (e). The Town responded, by and through counsel, Robert P. Leslie, Esq. with an answer received at PELRB on March 18, 1991. On or about August 15, 1991, Respondent/Selectman Joseph Gagnon filed an Answer and Counterclaim with the

PELRB. This prompted Complainants to file a Motion to Dismiss on August 22, 1991, and Respondent Gagnon to file Defendant's Opposition to Plaintiff's Motion to Dismiss on August 29, 1991. This matter was scheduled for and heard by the Board on September 22, 1991. It was followed by Complainant's Objections to Defendant Gagnon's further Motion to Dismiss and Defendant Gagnon's Motion for Costs filed with the Board on December 18, 1991, some two days after Gagnon communicated with the Board by letter of December 13, 1991.

In spite of the volume of paper changing hands in this case, the act or acts complained of and the principle involved are both simple and direct. Complainant's ULP of March 1, 1991 charged that Respondent Gagnon, who is also a selectman, produced a "certain television show entitled "For the Record." Gagnon allegedly made false, malicious and defamatory statements on that show on or about October 24, 1990 which held "the members of Local 2892 up to public ridicule and has diminished their reputation in the community" resulting, allegedly, in diminishing "the Local's credibility in obtaining a contract." The charges also alleged that, on or about January 21, 1991, Gagnon "purposely and maliciously misrepresented the wages paid to certain members of the Fire Department...[and] urged the citizens of the Town of Salem to avoid the results of any collective bargaining agreement tentatively reached between Local 2892 and the Board of Selectmen by urging the Budget Committee and Town Meeting to reject any such settlement that may be reached."

The Respondent Town answered and requested dismissal of the charge. It asserted that there was a disclaimer at the beginning and end of Gagnon's program which provided:

The views expressed in the proceeding program reflect those of the producer and do not necessarily reflect those of Continental Cablevision or the Town of Salem.

By way of additional response the Town said that RSA 273-A:1 (X) defines "public employer" and that Respondent Gagnon, acting alone, is not a public employer. The Board of Selectmen for the Town consists of five members, a majority of whom must act for their action to be considered an act of the Town.

FINDINGS OF FACT

1. Salem Brotherhood of Firefighters, Local 2892, IAFF is the duly certified bargaining agent for certain employees of the Salem Fire Department.
2. The Town of Salem is a public employer within the meaning of RSA 273-A:1, II and X.
3. Respondent Joseph W. Gagnon produces a cable television program entitled "For the Record" and is also a member of the Board of Selectmen for the Town of Salem.
4. Respondent Gagnon on at least two occasions made comments on a cable television program which were uncomplimentary of firefighters, which resulted or may have resulted in diminution of the stature, esteem and public credibility of firefighters, which misrepresented wages paid to certain members of the Salem Fire Department, and which encouraged the rejection of any negotiated agreement which might be reached between Firefighters and Town.
5. Respondent Gagnon, in making the foregoing comments, was acting as an individual and neither as a member of or on

behalf of the Town of Salem Board of Selectmen, as confirmed by testimony from Selectman Richard Gregory.

6. Respondent Gagnon in making comments on or about October 24, 1990 and January 21, 1991 did so during the course of and prior to the conclusion of negotiations between Firefighters and Town.
7. Respondent Gagnon's Answer and Counterclaim was dated August 13, 1991, filed August 15, 1991, and was not timely filed under Regulation Pub 304.02.
8. Firefighter's Motion to Dismiss said Gagnon's Answer and Counterclaim was dated August 21, 1991 and filed August 22, 1991.

DECISION AND ORDER

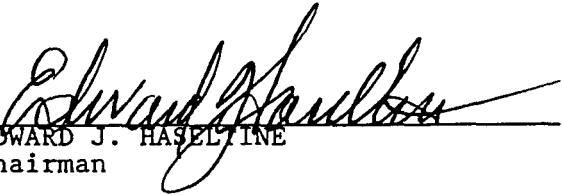
While it may not have exhibited the best use of judgment or enhanced the bargaining process as contemplated in the Statement of Policy found at RSA 273-A:1, XI, there is nothing to preclude Respondent Gagnon's speaking about the bargaining process or expressing his opinion about Firefighters Local 2892 as a private citizen. This Board is in no position to abridge his or any citizen's First Amendment rights. If the parties had desired to control the access either or both of them might have had to the media, they could have done so by entering into a negotiations procedures agreement prior to the time they commenced bargaining. They did not. From this we can only infer one of two things: The topic of media access was not of sufficient importance to have initiated such a discussion or such a discussion was initiated and the parties were unable to reach a consensus. Neither of these inferences causes us to conclude that the parties intended to be bound by any self-imposed gag rule pertaining to the progress of negotiations.

Firefighters' pleading (Objection to Respondent Gagnon's Motion to Dismiss) as late as December 18, 1991 would have this Board hold that Gagnon's comments, made while the parties were in negotiations and prior to impasse, were in violation of the parties' ground rules for negotiations. There is no evidence that those ground rules, to the extent they existed, (they were not in evidence in this proceeding) prohibited such commentary. We find insufficient evidence for us to conclude that Gagnon's comments were made in his capacity as a selectman of the Town of Salem. Gagnon walked up to the line but he did not cross it. Had he utilized information only available to him in his capacity as a negotiator or been speaking on behalf of the Board of Selectmen, this would have been impermissible conduct under RSA 273-A:5, I (e). He did not. This case is distinguishable from Keene Education Association, Case No. T-0282:9, Decision No. 90-54 dated July 27, 1990 in that Keene involved public comment about a fact finding report once it became public. Like Keene, this case shows no evidence of a prior agreement for principals at the table to remain silent. Such silence may have enhanced the bargaining process and the relationship of the parties but cannot be compelled by this Board absent an agreement by the parties.

The charge of unfair labor practice is DISMISSED and requests for all other forms of relief, whether by Complainant or Respondent's counterclaim are DENIED.

So Ordered.

Signed this 22nd day of January , 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.