



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PORTSMOUTH FIREFIGHTERS	:	
LOCAL 1313, I.A.F.F.	:	
	:	
Complainant	:	CASE NO. F-0106:14
	:	
v.	:	DECISION NO. 94-04
	:	
CITY OF PORTSMOUTH, BOARD OF	:	(On remand from Decision
FIRE COMMISSIONERS	:	No. 92-20
	:	
Respondent	:	
	:	

BACKGROUND

On July 3, 1991 the Portsmouth Firefighters, Local 1313 IAFF (Union) filed unfair labor practice (ULP) charges against the City of Portsmouth Board of Fire Commissioners (City) alleging violations of RSA 273-A:5 I (a), (b), (e) and (g). The City filed an answer on July 12, 1991 after which this matter was heard by the PELRB on October 8, 1991.

On February 19, 1992, the PELRB unanimously rendered Decision No. 92-20 finding that the Board of Fire Commissioners violated RSA 273-A:5 I (a), (b) and (e) and directing that they cease and desist from "(1) attempting to circumvent the exclusive status of the bargaining agent by overtures to communicate directly with union members, (2) commenting on or suggesting changes in the elected leadership of the union, and (3) suggesting that the elected leadership of the union is ineffective and was doing a disservice to the membership by the manner in which it represented and negotiated for them." The City then filed a Motion for Rehearing on March 4, 1992. The Union filed objections thereto on March 19, 1992. The PELRB denied the Motion for Rehearing on April 2, 1992 (Decision No. 92-63).

The City then appealed the foregoing actions to the New Hampshire Supreme Court on April 24, 1992 (Docket No. 92-225). The Supreme Court accepted the case and issued a decision on August 25, 1993 (137 N.H. _____) in which it reversed and remanded because of the PELRB's reference to and reliance on a letter dated March 26, 1991, signed by two members of the City's Board of Fire

Commissioners and sent to members of the bargaining unit at their home addresses. It is from that remand that we review our findings and conclusions in Decision No. 92-20 and the denial of rehearing in Decision No. 92-63.

FINDINGS OF FACT

1. Findings of fact 1 through 6, inclusive, and so much of Finding No. 8 as pertains to Coughenour's letter of March 14, 1991 to Commission chair Pantelakos from Decision No. 92-20 are restated and affirmed.
2. Finding No. 6 is supplemented by adding the date "on May 16, 1991" after the words "appearing in the media." The newspaper involved is identified as "Fosters Daily Democrat."
3. Coughenour's letter of March 14, 1991, to Pantelakos, then Chair of the Portsmouth Fire Commission, predated Loch's comments by two months and, in addition to the contents referenced in Finding No. 8 of Decision No. 92-20, expressed the "membership[']s feeling that Commissioner Loch cannot be trusted and... she can not view situations openly."
4. Loch's comments appearing in the media on May 16, 1991 were made in her capacity as a fire commissioner and as a representative of the public employer, namely, the City. The manner and form of those comments would cause both employee members of the bargaining unit as well as the general public to believe that she was "acting for and on behalf of the public employer." Appeal of City of Portsmouth, Docket No. 92-225, (August 25, 1993), Slip. op., p. 4. Were she not a fire commissioner, Loch would not have been called by the press at home to comment on the events of the May 15, 1991 meeting referenced in Findings No. 4 and 5 of Decision 92-20.
5. The release of documents complained about by Loch on May 15, 1991 involved materials which had been posted on the union bulletin board on April 1, 1991 (transcript, p. 15) and had been "introduced" to the commissioners "a number of times" in an attempt to resolve similar situations "for any firefighter." Duddy testimony (transcript, p. 23). Likewise, because the agreement, dating to January 27, 1991 (transcript, p. 40), contained the signatures of Firefighter Fogg, Chief Sage and Coughenour, the union intended its release to put to rest any claims by Fogg that the Union was not helping him sufficiently.

(Transcript, p. 24).

6. Richard Duddy, Vice President of Local 1313, testified that Loch's comments had hindered the administration of union affairs because "a number of firefighters came up between union meetings and during the union meeting wanting to know what had the Executive Board done to hurt negotiations, did we have anything offered that we didn't bring to the body and basically they couldn't understand what was going on." These questions arose as the result of comments made by Loch. (Transcript, pp. 29-30).

DECISION AND ORDER

We have reviewed the record and pleadings in this case in accordance with the Court's remand. In conducting this review, we relied on the Court's observation that it could not "determine whether the PELRB would have reached the same decision had it not improperly relied on the letter substantively as evidence of an unfair labor practice." Thus, our review was conducted without reference to the Loch letter referred to by the Court.

Upon completion of our review of the record, less the letter, we conclude that our finding of a violation of RSA 273-A:5 I (a) and (b), but not (e), was substantiated by the facts presented at hearing. In particular, we note three events. First, Coughenour wrote the Fire Commission on March 14, 1991, saying that the membership had voted not to meet with the Commission and to rely on the Executive Board for conducting relationships between the membership and management. Second, and as suggested by the Union's Closing Memorandum (page 4), Loch's comments of May 15, 1991 "crossed the line of fair comment when [her] remarks specifically attacked the union leadership" and suggested that that "leadership hurt members during recent contract negotiations." We find no evidence that her criticism was justified (the parties had settled the contract by this time) and are concerned about the implications for future negotiations. Third and finally, whether intended or not, Loch's comments did have a disruptive effect on the union and its administration, as demonstrated by Duddy's testimony (Finding No. 6, above). Her actions created doubt in the effectiveness and truthfulness of the union leadership as it represented negotiations positions to the membership. This would have been more serious had negotiations been on-going under a statutory obligation to bargain. Nevertheless, it did create confusion and interference with the administration of an employee organization and "otherwise interfered" with employees exercising rights under the chapter in violation of RSA 273-A:5 I (b) and (a), respectively.

We affirm our findings of violations of RSA 273-A:5 I (a) and

(b) but VACATE the cease and desist order of Decision No. 92-20 because the conduct restrained thereby has since been mooted by the subsequent conduct of the parties.

So ordered.

Signed this 7th day of FEBRUARY, 1994.


EDWARD J. HASELTINE
Chairman