



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Jessica Miehle

Complainant

v.

Teamsters Local 633 of New Hampshire

Respondent

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Case No: G-0003-2

Decision No. 2004-185

APPEARANCES

Representing the Complainant:

Jessica Miehle, *pro se*

Representing the Teamsters Local 633 of New Hampshire:

Thomas D. Noonan, Business Agent

BACKGROUND

On June 16, 2004 Jessica Miehle (hereinafter "the Complainant"), at the time employed by the North Hampton Police Department ("the Town"), filed an improper practice charge against Teamsters Local Union 633 of New Hampshire (hereinafter "the Respondent"). Her complaint alleged that the Respondent violated RSA 273-A:5 II (a), (c), (d) and (e), [the latter deemed an erroneous error and corrected in an amended complaint as (f)], by virtue of certain actions it undertook that affected her. The Complainant states that during her employment with the department between the dates of March 23, 2001 and January 18, 2004, the Respondent

interfered with her in the exercise of statutory rights conferred by RSA 273-A, attempted to cause the Town to discriminate against her, refused to negotiate for her position with the Town in good faith, and did otherwise violate the collective bargaining agreement between the Respondent and the Town. The statutory violations alleged and an allegation that the Respondent breached its collective bargaining agreement with the Town are based upon the Complainant's assertion that she was the subject of discrimination by the Respondent due to her non-membership in the union. The Respondent denied the Complainant's charges in the answer it filed on June 25, 2004. On August 3, 2004 it also responded to the Complainant's July 19, 2004 amended complaint and continued its denial of all charges. In addition to its substantive denials, the Respondent raised the issue of the timeliness of the Complainant's allegations asserting that the allowable six-month period provided by the statute had been violated. The Respondent requests that the PELRB dismiss the Complainant's charges on lack of merit and lack of substance.

On July 9, 2004, a pre-hearing conference was conducted in the above-entitled matter during which the complainant and representatives of the respondent were present. The parties thereafter filed their amended pleadings to conform with discussion at the pre-hearing conference.

An evidentiary hearing was convened at the offices of the Public Employee Labor Relations Board in Concord on September 21, 2004 at which Ms. Miehle represented herself and Mr. Noonan represented the Union. Each was provided the opportunity to present witnesses and exhibits and had the opportunity to cross-examine witnesses. A Motion to Dismiss the complaint was made by the Union prior to the hearing on the merits of the unfair labor complaint asserting that the complaint had not be filed with the PELRB in a timely fashion. The Board took that motion and the complainant's objection under advisement and the hearing proceeded. At the outset, a Motion for Sequestration of the witnesses was made by Ms. Miehle and, without objection, was granted by the Board. Each party made an opening statement to the Board.

The Board has reviewed all filings submitted by the parties and considered all relevant evidence, including testimony and exhibits offered by the parties, and weighed the credibility of that evidence. Following the conclusion of the evidence and closings argued by both parties, the Board closed the record. After considering each party's case it determined the following:

FINDINGS OF FACT

1. Jessica Miehle ("Miehle") is presently employed by the Police Department of the Town of North Hampton as the "Administrative Assistant" to the Police Chief. This position is not within the bargaining unit represented by the Union.
2. Prior to assuming a newly created position of Administrative Assistant to the Police Chief, on or about January 26, 2004, Miehle was employed in the position of "Police Chief Secretary/Records Clerk" since March 23, 2001. This position is sometimes referred in

testimony by the parties to be the position of "Administrative Clerk". This position is within the bargaining unit represented by the Union and, while funded, has been vacant since January 26, 2004 and there are no immediate plans to fill it.

3. The Teamsters Local 633 of New Hampshire ("Union") is the exclusive bargaining representative for certain members of the North Hampton Police Department, including the position of Police Chief Secretary/Records Clerk.
4. The Town and the Union are parties to collective bargaining agreements spanning the effective periods of July 1, 2001 through June 30, 2004 and July 1, 2004 through June 30, 2009.
5. Article IV entitled "Employee Rights" of the CBA ending in June 30, 2004 states as follows:

"Neither the Town or the Union shall interfere with the rights of the employees covered by this Agreement to become or not to become members of the Union, and there shall be no discrimination against any such employees because of lawful union membership or non-membership activity status."
6. Miehle was hired as the Police Chief Secretary/Records Clerk (a/k/a Administrative Clerk) on March 23, 2001. At that time, she received little employee orientation related to her position's relationship to the union. At some later time within her first year of employment, she testified that she had a discussion with Police Chief Page regarding the advisability of her participation in Union meetings. She testified that the Chief briefed her on "a lot of politics" and told her that it would not be "wise for her to attend" the union meetings.
7. Joshua Stokel is an Officer within the Police Department and acted as local union steward since the summer of 2001.
8. At that time he assumed that position, Miehle had already been in employment for several months. Stokel did not know the nature, if any, of any orientation she may have been provided upon employment by either the union or the Police Chief.
9. During her tenure as the Police Chief Secretary/Records Clerk, while Miehle was a member of the bargaining unit, she was not a member of the union, did not apply for membership in the union, had not expressed any interest in joining the union, was invited to no union meetings, nor did she attend any union meetings.
10. Miehle did not demonstrate an understanding that there is a distinction between bargaining unit membership and union membership, referring to herself as a non-dues paying member of the union. Further, she was not informed of this distinction by the Chief nor by the union at the time of her initial hiring. Further, with the exception of Business Agent Noonan, it is apparent from the testimony of Chief Page, Officer Stokel and Ms. Miehle that none of these individuals clearly understood what rights and obligations were created through the certification, representation or negotiation processes normally attendant to collective

bargaining and RSA 273-A. Page, Stokel and Miehle repeatedly used bargaining "unit" and "Union" interchangeably.

11. From March 23, 2001 to a July 24, 2003 meeting convened by Noonan and to the date of her filing of this complaint, and the amended complaint, neither Meihle, Chief Page, nor Officer Stokel showed discernable comprehension that status as a bargaining unit member was not the same as being a union member. On or about July 24, 2003 Noonan, in response to a call from Miehle informing him that she did not believe that she was being fairly represented, visited North Hampton and undertook discussions that resulted in clarification of the representation obligation the union owed to Miehle. Any confusion that may have existed regarding positions and persons to be represented in negotiations prior to July 24, 2003 was resolved through the intervention of Noonan and Miehle, Stokel and Chief Page all agreed resolution had been achieved.
12. Miehle did not attend union meetings as she did not meet the necessary criteria for attendance as a member of the union or an employee who had initiated the process of joining the union, nor was she otherwise invited to attend union meetings by a union representative.
13. There were no bargaining unit meetings conducted during Miehle's service with the Town until the ratification meeting conducted in August of 2003. During this same time, there were several meetings of union members, many of them informal "hallway" discussions.
14. Miehle never sought representation from the Union in any matter to which she was entitled to representation, such as grievance filing or other issue with her employer. Miehle never asked for any representation by the union in matters other than relating to negotiations in or about July or August 2003.
15. Her first contact with the union business agent occurred approximately one year after the local steward had informed her that she was not invited to a union meeting because she was not a member of the union.
16. During the period of negotiations, Miehle was aware that other positions, e.g. public works employees represented by the union, were also collecting data for submission and input into the negotiations process.
17. Miehle was not a member of any negotiating team for a collective bargaining agreement, however, as a bargaining unit member, she did collect and prepare salary information regarding her position as part of the union's overall negotiations with the town at the request of Officer Stokel who led the negotiations. No bargaining unit information was purposely withheld from Miehle by the union that was shared with other bargaining unit members.
18. Chief Page testified that during negotiation meetings the union presented salary data and other information regarding Miehle's position. However, he disagreed with the salary positions taken by the union and told Stokel that he wanted more money in the union's proposal for Miehle's position.

19. Chief Page had been an assistant steward for the unit at the time it was initially certified.
20. The union negotiating team met with management on four occasions during the months of July and August resulting in a tentatively agreed collective bargaining agreement.
21. "Word of mouth" was the predominant method of communication in this small employer environment. E-mail messages were utilized by the union to provide notice of union meetings. Patrolman Gary Homiak testified that within the configuration and applications of the Police Department's e-mail system an operator sending e-mail would delete from the entire employment e-mail roster within the department the names of those not to receive the e-mail message.
22. After the negotiations had concluded between the Chief and Stokel, on August 18, 2003 a ratification meeting was conducted at which the tentative collective bargaining agreement was ratified by a vote of those bargaining unit members present. Although testifying that she did not receive a direct invitation from the union, Miehle attended what was the only meeting that could be classified as a meeting of the bargaining unit.
23. In a direct discussion with Miehle during or immediately preceding negotiations, Chief Page testified that she told him that "it seemed dollars were going to certain positions" other than hers.
24. The non-bargaining unit position of Administrative Assistant was posted on or about December 24, 2003. There was only one candidate considered by Chief Page. There was no outside posting or advertising of the opening and the application deadline was January 1, 2004. On January 26, 2004 Miehle assumed the position.
25. Prior to the filing of this complaint, the union had filed an unfair labor practice complaint with the Public Employee Labor Relations Board calling into question the Town's ability to create this position filled by Miehle after negotiations had been completed. The Chief testified that he and Miehle discussed both complaints and that he testified that he stressed to her that he could not get further involved because he represented management. Miehle subsequently filed her complaint on January 16, 2004 after the union's complaint had been filed.
26. Chief Page, under cross-examination and later questions of the Board admitted that he had conversed with Miehle on at least three occasions during the time period of July through August of 2003. He also stated that on all three occasions he told Miehle to call Noonan. He had other discussions with Miehle thereafter up to and after Miehle accepted the newly created non-bargaining unit position of Administrative Assistant to the Police Chief and including the period of time immediately preceding her filing of this complaint. His testimony in characterizing his conversations with her as not "consulting" or that he was "not aware" of her plans to file a complaint, or that he "never told her not to go to a meeting" lack certain indicia of credibility in light of his demeanor at hearing, his own testimony about his demands in negotiations, including the statement in order for him to draw "good labor" to positions he needed to obtain in negotiations a pay scale and "whatever

benefits that individual thought they deserved during negotiations". Credibility is also strained by responding to direct discussion with a member of the bargaining unit in attempting to increase salary for Miehle's position, by the timing and substance of his direct discussions with Miehle, by the timing of the newly created position, by his exclusive "inside" posting of the employment opening, by his targeted hiring and in light of the testimony of other witnesses, including that of Ms. Miehle and Officer Stokel.

27. Miehle was not included in a meeting regarding patrol overtime, time-off requests and police detail issues, and of other so-called "non-cost items" as characterized by Chief Page in his testimony conducted on January 18, 2004. There is conflicting testimony as to whether or not any discussion took place at this meeting regarding either the Administrative Assistant position or the Police Chief Secretary/Records Clerk position. In either case, one of the results of that meeting was that Miehle was left off a seniority list of employees within the bargaining unit.
28. The Town has the responsibility for maintaining a date of hire, or seniority, record for the employees within this unit.
29. The Police Chief posted the new position for Administrative Assistant to the Chief in or about December of 2003 announcing a deadline for applicants on January 15, 2004. There was no outside posting soliciting other than present employees within the Police Department. Miehle was the sole candidate considered for the position of Administrative Assistant to the Police Chief.

ORDER

JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has sole original jurisdiction to adjudicate claims of unfair labor practices committed by a public employer or an exclusive bargaining representative certified under RSA 273-A:8 through the application of RSA 273-A:6. The PELRB also is authorized to determine whether claims alleging the commission of an improper or unfair labor practice pursuant to RSA 273-A:5, I are filed in a timely manner as calculated in RSA 273-A:7.

PROCEDURAL MOTION

The Complainant's charges involve reference to many actions alleged to have been undertaken by the Respondent at a time in the past greater than six months prior to the filing date of January 16, 2004. Indeed, the Complainant charges that actions from the date of her hire as the Police Chief Secretary/Records Clerk on March 31, 2001 through her promotion to the position of Administrative Assistant to the Police Chief collectively should be considered in the Board's

consideration as to whether the Respondent violated rights conferred to the Complainant under the provisions of RSA 273-A. The statute specifically states that, "The board shall summarily dismiss any complaint of an alleged violation of RSA 273-A:5 which occurred more than 6 months prior to the filing of the complaint with the body having original jurisdiction of that complaint." See RSA 273-A:6, VII. The Complainant requests that the Board consider actions or inaction by the Respondent from at least the date of the expiration of her probation in or about March 2002 until the date of the filing of her complaint on June 16, 2004. The Board, while allowing, in the first instance, the Complainant to offer evidence regarding actions that she alleged represented a pattern of activity amounting to discrimination, it did so with the condition that it would reserve its ruling on the Union's motion to dismiss her complaint as to incidents that occurred outside the six month limitation provided for by RSA 273-A:6.VII

At hearing, the Complaint admitted that she had not requested any assistance from the union in the form of representation in negotiations or of the resolution of disputes involving her employment or working conditions prior to her contact with the union's business agent in or about July, 2003. The Complainant did not request a meeting of the bargaining unit prior to that time and, the record does not reflect that there were any meetings of the entire certified bargaining unit. Prior to July, 2003, the Union cannot be charged with any knowledge, nor do we find a sufficient evidentiary basis, of the existence of a pattern of actions amounting to discrimination against the Complainant. If such a pattern of actions were found, then the Board might consider that the time requirement found in RSA 273-A:6,VII would not apply. However, weighing the evidence presented to establish a "pattern" of such actions as would constitute actionable discrimination and finding it insufficient, we apply the six-month limitation and hereafter consider only actions by the Respondent alleged to have occurred on or after December 16, 2003.

DECISION

The Complainant alleges that over a period of approximately three and one-half years the Respondent undertook a "pattern of actions" that were discriminatory and that it did so because although she was a member of the bargaining unit, she was not a member of the union, itself. We find insufficient weight in the evidence presented as to actions that occurred prior to six months of her filing of her complaint to consider any such incidents as evidence of a pattern and therefore restrict our examination to those actions alleged to have occurred on or after December 16, 2003. After considering the actions of the Respondent during the applicable period, we find that the Complainant was fairly represented by the Respondent who is the duly certified exclusive bargaining representative for the Complainant's bargaining unit. In finding so, we have concluded that salary and benefits for her position were bargained for properly, albeit not to the satisfaction of the Complainant, that unions are required to invite non-union members to union meetings, that the Respondent did not cause or attempt to cause the Town to discriminate against the Complainant, and that the Complainant cannot stand in the shoes of the Town and claim that the Respondent breached the collective bargaining agreement it had negotiated the Town.

DISCUSSION

The Complainant was hired on March 31, 2001 to fill the position of Police Chief Secretary/Records Clerk. This position is represented by the Respondent as the exclusive bargaining representative pursuant to its certification over this bargaining unit that included certain employees within the police department in accordance with RSA 273-A:8. Negotiations between the union and the Town were in progress during July of 2003 for a successor collective bargaining agreement between the Town and the union. In response to a request from the Complainant, the Respondent's Business Agent traveled to North Hampton on July 24, 2003 for the purpose of undertaking a discussion with the Complainant, the Police Chief and the local union steward aimed at addressing obvious confusion among them as to what rights the Complainant had as a bargaining unit member, including the specific right to attend certain union meetings, notwithstanding that she had not become a member of the union. Following that meeting, there is no disagreement, as expressed by each of the Town employees in their testimony, that such issues as had existed were resolved.

During later July and the month of August of 2003, the Town and the union participated in four negotiation sessions regarding the new collective bargaining agreement. The Complainant was not a member of the bargaining unit's negotiating team and therefore was not entitled to attend the negotiation sessions. The Complainant was requested to undertake supportive tasks in the collection and preparation of certain data related to her position so that the negotiating team could use it in their negotiations with the Town. They did utilize it in negotiations that led to a tentative agreement that was to be ratified by the bargaining unit by a vote at a meeting scheduled for that purpose. The meeting was conducted on August 18, 2003 and the tentative agreement was ratified. The Complainant knew in advance of the meeting and chose not to attend. The choice not to attend was hers. She was not prohibited from doing so by the Respondent union.

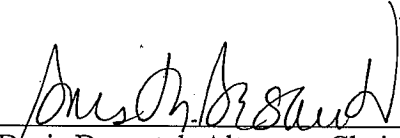
Throughout the course of time under our consideration, *i.e.* December 16, 2003 to June 16, 2004, we believe there were several meetings of union members, but none of the bargaining unit itself besides the August 18 ratification meeting addressed above. Most of these meetings were not formal meetings, but rather were impromptu meetings in hallways and other venues utilized by police officers. There is no requirement under the provisions of RSA 273-A that requires a union to open its meetings to non-union members.

There is a single specific meeting raised by the Complainant that was conducted on January 18, 2004 at which the Chief met with union police officers to discuss overtime and detail issues as well as the newly created position of Administrative Assistant. The Complainant asserts that she was not invited to this meeting. The board finds insufficient evidence to find that the Complainant was entitled to attend this meeting under any provision of the statute. It is not uncommon for a bargaining unit to act through representatives, as is common to all negotiations in the collective bargaining milieu. There is no requirement that a person employed in a position represented by a union be in attendance at a meeting at which their position or benefits are discussed with management, much less a meeting at which a non-unit position is discussed.

Upon considering the evidence before us, we find that the Complainant was not excluded from representation by the Respondent, she simply did not like the end product of the negotiations carried out by the Respondent on behalf of all positions within the bargaining unit. Further, we conclude that the Respondent's actions did not constitute interference with Miehle's rights as a public employee in violation of RSA 273-A:5,II (a); nor did Respondent's actions cause or attempt to cause the Town to discriminate against Miehle in violation of RSA 273-A:5,II (c); nor did Respondent fail to negotiate for Mielhe in her position as Police Chief Secretary/Records clerk in violation of RSA 273-A:5,II (d). We do not specifically reach the Complainant's last allegation that the Respondent's actions constituted a breach of its collective bargaining agreement with the Town because we do not find that the Complainant has standing to make such an allegation.

So Ordered.

Signed this 1st day of December , 2004



Doris Desautel, Alternate Chairman

By unanimous vote. Alternate Chairman Doris Desautel presiding with Board Members E. Vincent Hall and Carol Granfield also voting.

Distribution:

Jessica Miehle, *pro se*

Thomas D. Noonan, Business Agent