



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Teamsters Local 633 of New Hampshire	*	
	*	
Complainant	*	
	*	Case No: G-0003-1
v.	*	
	*	Decision No. 2004-188
Town of North Hampton	*	
	*	
Respondent	*	
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APPEARANCES

Representing the Complainant:

Thomas D. Noonan, Business Agent

Representing the Respondent:

J. Joseph McKittrick, Esq.

BACKGROUND

Teamsters Local Union 633 of New Hampshire (hereinafter "the Union") filed an improper practice charge against the Town of North Hampton (hereinafter "the Town") on June 14, 2004 alleging that the Town violated RSA 273-A:5 I (a), (c) and (e) by conduct relating to the bargaining unit position of administrative clerk within the Police Department. The Union states that during the course of negotiations for a successor contract, the Town failed to disclose its intent to change the position of administrative clerk to that of an administrative assistant.

The administrative assistant position has an increase in wages over those negotiated for the administrative clerk. The Union contends that this non-negotiated increase in wages had a direct bearing on the overall budget voted by the March 2004 Town Meeting. The Union alleges that contract negotiations were completed in good faith by the Union, which included wage increases for police officers, the administrative clerk (now vacant), and public works personnel, but none as high as the administrative assistant position. The Union requests that the PELRB sustain the complaint and issue a cease and desist against the Town.

The Town filed its answer denying the Union's charge on June 22, 2004. The Town specifically denies that it "changed" the administrative clerk's position to an administrative assistant's position and affirmatively states that it created the new position of administrative assistant. The administrative clerk position still exists within the bargaining unit. The Town acknowledges that the parties reached a tentative contract settlement in August 2003, and that it was that agreement, effective July 1, 2004, that was ratified by the vote at the 2004 Annual Town Meeting. However, regarding any actions or omissions alleged by the Union to have occurred during negotiations, the Town asserts that those actions or omissions would have occurred more than six (6) months prior to the filing of the instant charge, and thus exceed the applicable statute of limitations for an improper practice charge. The Town relates that on or about December 24, 2003, Chief of Police Brian Page announced the creation of the new position of "Administrative Assistant to the Chief." As described by the Town, the position was posted with a complete job description and salary range, and was listed as a non-union, exempt position. The Town asserts that the creation of a new position and job description, as well as the establishment of the position's initial salary and benefits, is all within the rights reserved to management. It notes that at no time has the Union made a demand to bargain or filed a grievance over the creation of said position. Based upon all of the aforementioned facts and arguments, the Town requests that the instant complaint be dismissed.

The parties' representatives appeared at a pre-hearing conference conducted on August 23, 2004 at PELRB offices, Concord, New Hampshire. An evidentiary hearing was convened at the offices of the Public Employee Labor Relations Board in Concord on October 26, 2004 at which Mr. Noonan represented the Union and Attorney McKittrick, the Town. 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 Town 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 on the merits proceeded.

The Board has reviewed all filings submitted by the parties and considered all relevant evidence, including testimony and exhibits offered by the parties. Following the conclusion of the Union's case, the Town's counsel made a motion to dismiss for failure of the Union to establish its case by a sufficiency of evidence. The Board recessed the proceedings to consider the, now, two pending motions to dismiss the Union case.

The Board determines the following:

FINDINGS OF FACT

1. 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. The recently created position of Administrative Assistant to the Police Chief is not included in the bargaining unit.
2. The Town and the Union were parties to a collective bargaining agreement spanning the effective period of July 1, 2001 through June 30, 2004 and had negotiated a successor agreement to take effect on July 1, 2004 at the time of the Union's complaint.
3. The parties entered into, and concluded, negotiations that resulted in a tentative agreement that was ratified by the Union on or about August 18, 2003. While there was discussion during negotiations of the position of Administrative Clerk/Secretary, there was no discussion during negotiations of the creation of the position of Administrative Assistant. Any discussion between the parties of the latter position occurred at least four months after ratification.
4. Approximately four months after negotiations were concluded, on or about December 24, 2003, the Town posted a job opening for an Administrative Assistant to the Police Chief. The position was approved by the Board of Selectmen and that action reported at a staff meeting at which Stokel was present on January 14, 2004.
5. The position was subsequently filled by an employee who had previously held the position of Administrative Secretary/Clerk which had been included in the bargaining unit.
6. In March of 2004 at the Town meeting, funds were approved to pay for the new position of Administrative Assistant to the Police Chief.
7. Joshua Stokel is an Officer within the Police Department and has acted as local union steward since the summer of 2001. Under cross-examination he agreed that the Town has the right to create new positions and the parties' Collective Bargaining Agreement reserves that right to the Town. (See Joint Exhibit #2 ARTICLE I MANAGEMENT RIGHTS, Sections B.3 and B.8).

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.

TOWN'S PRELIMINARY MOTION TO DISMISS COMPLAINT AS UNTIMELY

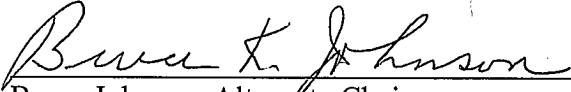
The Union's complaint relates to the creation of the new position of Administrative Assistant, a position not within the existing bargaining unit. The Union filed its complaint with the Public Employee Labor Relations Board on June 14, 2004. The first indication that the Union had that a new position was being considered may have been the posting of the job opening by the Police Chief on December 24, 2004. The minutes of a police department staff meeting on January 14, 2004 is evidence that Officer Stokel was told that the Board of Selectmen had approved the new position. The authorization of funds for the new position by the Town Meeting in March of 2004 is further evidence of the legal creation of the new position. We are guided by RSA 273-A:6, VII when considering the timeliness of a party's filing of a complaint. 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." As even the earliest notice of a new position, *i.e.* December 24, 2003 job posting, falls within the six month period allowed by the statute, we do not find that the Union's complaint is barred from our consideration by the passage of time and therefore DENY the Town's Motion to Dismiss on those grounds.

DECISION

We next consider the Town's motion to dismiss made during the hearing at the conclusion of the Union's case for failure of the Union to establish its *prima facie* case, *i.e.* to provide sufficient proof to support a finding of the commission of an unfair labor practice by the consideration of the evidence presented by the complaining party even if no contradictory evidence has been considered. When we consider the evidence that was presented by the Union and view that evidence in a light most favorable to the Union, as required when considering a motion to dismiss on this basis at the conclusion of the Complainant's case, we do not conclude that the Union has proven that the Town's actions, taken some four to eight months after a tentative agreement had been reached by the parties, constitute an unfair labor practice. Therefore, we GRANT this Motion to Dismiss the Union's complaint.

So Ordered.

Signed this 15th day of December, 2004


Bruce Johnson, Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding with Board Members Richard E. Molan and James M. O'Mara also voting.

Distribution:

Thomas D. Noonan, Business Agent
J. Joseph McKittrick, Esq.