



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME, Council 93, Local 3657/Milford Police Employees**

v.

**Town of Milford**

**Case No. G-0089-3**  
**Decision No. 2011-084**

**Appearances:**

Karen E. Clemens, Esq., Associate General Counsel, Boston, Massachusetts for the AFSCME, Council 93, Local 3657/Hillsborough County Sheriff's Department

James E. Higgins, Esq., Manchester, New Hampshire for the Town of Milford

**Background:**

The AFSCME Council 93, Local 3657/Milford Police Employees (Union) filed an unfair labor practice complaint against the Town of Milford on September 14, 2010. The complaint is based upon the statements and conduct of the Town Administrator at a mandatory training meeting wherein he addressed Union activity that occurred prior to a town meeting vote which included a warrant article containing the costs of a contract resulting from a fact finder's report. The Union claims that as a result the Town has coerced employees and interfered with the employees' and the union's rights in violation of 273-A:5, I (a), (b), (e), (g), and (i). As relief, the Union requests that the Board order the Town to cease and desist from such actions, to recognize the Union as the exclusive representative of the bargaining unit members, to post the Board's findings for 30 business days, and to reimburse the Union for all costs and expenses incurred to pursue this charge.

The Town denies that it committed an unfair labor practice and claims the Town Administrator's statements and conduct were legitimate responses to Union activity and did not constitute coercion of bargaining unit employees or an interference with the rights of bargaining unit employees or the Union.

This case was originally scheduled for hearing on November 3, 2010 but at the pre-hearing conference the parties agreed to submit the complaint for decision based upon stipulated facts and briefs. These filings have been submitted and the Board's decision is as follows.

### **Findings of Fact**

1. The AFSCME Council 93, Local 3657/Milford Police Employees is the certified exclusive representative of full-time patrolmen and detectives and all part-time personnel working 20 hours or more a week on a permanent basis.

2. The Town of Milford is a public employer within the meaning of RSA 273-A:1, IX.

3. Steve Lyons is an AFSCME Council 93 representative who works with and represents the bargaining unit in collective bargaining. Guy Scaife is the Milford Town Administrator and has been involved in the collective bargaining process in that capacity.

4. The parties' prior collective bargaining agreement covered the April 1, 2005 to March 31, 2009 time period (2005-09 CBA). That contract and the immediately prior contract resulted from the RSA 273-A:12 fact finding process which is utilized to resolve impasse in collective bargaining.

5. The respective negotiating teams for the parties reached a tentative agreement on a successor contract to the 2005-09 CBA after utilizing the RSA 273-A:12 mediation process. The Union supported the tentative agreement but it was rejected by the Board of Selectmen. The parties then participated in the statutory fact finding process under RSA 273-A:12. However, management and the Board of Selectmen did not agree with the recommendations contained in the Fact Finder's report.

6. The Fact Finder's report was duly included on Warrant Article 11 pursuant to the procedures set forth in RSA 273-A:12. The Town Administrator addressed voters at the February 6, 2010 deliberative session and explained why Town Management and the Board of Selectmen did not support the Fact Finder's recommendations.

7. Prior to the March 11, 2010 Town Meeting the Union prepared and distributed a two sided one page flier urging approval of Warrant Article 11. In this flier the Union states that "[c]omments made by the town administrator at the recent deliberative sessions were either

misleading or blatantly false.” The Union supported these statements citing the Town Administrator’s claim that contract warrant articles “typically consist of language that is jointly agreed upon by the town and the union.” The Union found this statement misleading or false and pointed out that the last two contracts for this bargaining unit resulted from the fact finding process, just like the current Warrant Article 11. The Union also found the Town Administrator’s statement that the parties went directly to fact finding to be misleading or false since the parties had first reached a tentative agreement through mediation and only employed the statutory fact finding process when the mediation failed to resolve the impasse.

8. The voters did not approve Warrant Article 11. At some later point the Town Administrator learned about the Union flier and was upset, as he perceived it as an unfounded personal attack which improperly called his integrity into question. He clearly decided to find some way to confront bargaining unit employees about the Union flier.

9. On March 18, 2010 Milford police department Command, Supervisory, and Patrol staff attended a mandatory training at the department. The meeting included bargaining unit employees and other employees. The Town Administrator was not a necessary participant in this meeting but when he learned about it he recognized the meeting presented an opportunity for him to confront bargaining unit employees about the Union flier. Without prior notice to the Union or bargaining unit employees of his intentions he appeared at the meeting – the record reflects that he was angry and upset, and he proceeded to admonish bargaining unit employees.

10. He communicated his outrage about the Union flier; he lectured about the obligations of bargaining unit employees and the Union; and he instructed bargaining unit employees about how they should engage with the Union and be involved in Union business and operations. He described the process the bargaining unit must follow when preparing and making public statements like the Union flier, and he referenced a code of conduct which he claimed governed his and the bargaining unit employees behavior, plainly inferring that this code of conduct superceded any relevant rights under RSA 273-A. For example, he told bargaining unit employees that: 1) they and the Union had an obligation to adhere to some undefined “code of conduct;” 2) each employee “had a responsibility to insure that public documents or statements released to the public were fair and truthful and not “misleading or blatantly false;” 3) he asked bargaining unit employees to defend the Union flier by asking them to give examples of his misleading or false statements; and 4) he cut off Union Chapter Chair Dean Hardwick’s objections to his comments, stating “let me finish, it’s my meeting.”

11. The parties’ contract negotiations have continued since the March 18, 2010 meeting.

### **Decision and Order**

#### **Decision Summary:**

The Town has committed unfair labor practices in violation of RSA 273-A:5, I (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred

by this chapter) and (b)(to dominate or to interfere in the formation or administration of any employee organization). The Town shall cease and desist from such activity and post this decision in the workplace for thirty days.

**Jurisdiction:**

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

**Discussion:**

Under RSA 273-A:5, I (a) and (b) it is a prohibited practice for any public employer to restrain, coerce, or otherwise interfere with its employees in the exercise of the rights conferred by this chapter and/or to dominate or interfere in the formation of administration of any employee organization. The Board concludes that the Town Administrator's conduct has run afoul of these provisions and the Town of Milford has committed and engaged in unfair labor practices. In particular, the Board finds that the Town Administrator's conduct constituted a coercion and interference with bargaining unit employees in the exercise of the rights conferred by RSA 273-A and a domination and interference in the administration of the Union, the employee organization which has been duly certified as the bargaining unit's exclusive representative.

We begin with some consideration of the Union flier which prompted the Town Administrator to lecture bargaining unit employees and engage in an anti-union harangue at the March 18, 2010 mandatory training meeting. At the time the flier issued a fact finder's recommendation was about to be considered by voters at annual town meeting. Both the Union and management representatives shared with voters their respective opinions about the fact finder's recommendation - management at the deliberative session and the Union in its one page

flier. Management opposed the recommendation and the Union supported it. The content of the Union flier deserves some attention given the Town Administrator's response. When viewed in its entirety the Board finds it represented proper advocacy by the Union on behalf of bargaining unit employees. It not only outlined the reasons why the Union believed voters should approve Warrant Article 11, but it also fairly and clearly stated the factual basis for the Union's belief that some of the Town Administrator remarks at the deliberative session were misleading or blatantly false.

This brings us to the question of whether or not the Town Administrator's response to the Union flier violated any of the statutory provisions cited by the Union. The Union's and bargaining unit employee's self-determination rights protected under the statute and at issue in this case are an integral part of the right of public employees to organize and act collectively in the RSA 273-A bargaining process. They include the right of the Union and bargaining unit employees to conduct their internal affairs and administer and conduct Union business and operations without unsolicited advice, instruction, criticism or other intrusions by the Town Administrator designed to influence and change how such affairs are conducted. They include the right to determine when, where and how to respond to the Town Administrator's comments made at the deliberative session. They include the right of bargaining unit employees to decide the nature and extent of their involvement in Union business and activity, if any, including their involvement in how the Union chooses to support the fact finder's recommendations and the extent to which they preview and approve specific Union activity, like the disputed flier. These are all the prerogatives of the Union and bargaining unit employees.

In prior cases the court has recognized certain employer action which does not violate the provisions of RSA 273-A:5, I. Examples include a police chief's email communication to all

police department personnel about a specific bargaining proposal after the completion of negotiations, *Appeal of Town of Hampton*, 154 N.H. 132 (2006)(conduct was not improper direct dealing in violation of RSA 273-A:5, I (e)); and a fire commissioner's comments reported in a local newspaper critical of Union leadership, *Appeal of City of Portsmouth*, 140 N.H. 435 (1995)(comments lacked any "intimidation, coercion, or misrepresentation"). However, the decisions in *Hampton* and *Portsmouth* do not allow, excuse or condone the conduct now under review given the facts and circumstances of this case.

The behavior and statements of the Milford Town Administrator were made in a significantly different setting from the ones present in *Hampton* (general email) and *Portsmouth* (statements to reporter published in local paper) and also differed in substance and subject matter. The Milford Town Administrator used his position and power as employer to directly engage bargaining unit employees in an intimidating and coercive manner, and his "code of conduct" references constitute a misrepresentation of the applicable law governing the rights of bargaining unit employees. He intervened in a mandatory training meeting in order to single out, corner, and confront bargaining unit employees about their exercise of statutorily protected rights. He lectured to them about an amorphous and unspecified code of conduct that is not incorporated in the statute, telling them in substance that they must exercise their RSA 273-A rights subject to this code of conduct; he strongly counseled employees, or even ordered them, as to how Union business must be conducted; he demanded that they defend the accuracy and general efficacy of the Union flier, he quickly suppressed an objection to the appropriateness of his remarks; and he generally badgered and berated bargaining unit employees about matters clearly within the exclusive prerogative of the employees and the Union.

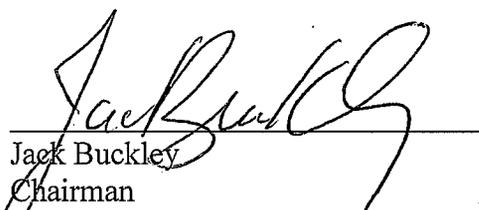
The Town Administrator's conduct was not justified by the fact that he believed the Union's flier was an unacceptable affront to his character and integrity. There were a number of different ways that he could have responded (including directly to the bargaining unit's certified exclusive representative) without seizing upon a mandatory training meeting as a means to directly engage and confront bargaining unit employees about legitimate Union business.

Therefore, the Board finds that the Town did coerce and interfere with bargaining unit employees in the exercise of their statutory rights, including their right to choose how to exercise their rights to engage in concerted Union activity and participate in Union business. Bargaining unit employees are entitled to exercise such rights without being subjected to the kind of direct attack levied by the Town Administrator, and without being called upon in a mandatory meeting to defend and explain Union activity. Likewise, the Town did dominate and interfere in the administration of the Union in areas such as how the Union and bargaining unit employees determine to interact and administer the business of the Union. The Town Administrator does not have the right to effectively convene a mandatory meeting of bargaining unit employees to lecture and instruct them about such matters as happened in this case.

Accordingly, the Town has committed unfair labor practices in violation of RSA 273-A:5, I (a) and (b). The Town shall cease and desist from all such coercion, domination, and interference with employee and Union rights and administration of the Union. The Union's claims based upon alleged violations of other provisions of RSA 273-A:5, I are dismissed. This decision shall be posted for thirty days in an area(s) in the workplace where it can be viewed by bargaining unit employees and the attached certificate of posting shall be completed and filed with this Board.

So ordered.

Date: 3/23/2011

  
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Jack Buckley  
Chairman

By unanimous vote of Chair Jack Buckley presiding. Board Member Richard J. Laughton, Jr.  
and Board Member James M. O'Mara, Jr.

Distribution: Karen Clemens, Esq.  
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