



NH Supreme Court affirmed this decision on December 28, 1993, Slip Op. No. 92-506, 138 NH 142 (1993).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PROFESSIONAL FIREFIGHTERS OF EAST DERRY, LOCAL 3353	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. F-0142:2
	:	
TOWN OF EAST DERRY, EAST DERRY FIRE PRECINCT	:	DECISION NO. 92-113
	:	
Respondent	:	
	:	

APPEARANCES

Representing Professional Firefighters of East Derry:

Glenn R. Milner, Esq., Counsel

Representing Town of East Derry:

Harry S. Gale, Consultant

Also appearing:

- Kelley Collins, Fire Department
- Arthur Reynolds, Fire Department
- Nancy Rubino, Local 3353
- Towy Stowers, Local 3353
- Jim Saulnier, Local 3353

BACKGROUND

The Professional Firefighters of East Derry, Local 3353, I.A.F.F. (Union) filed unfair labor practice (ULP) charges against the East Derry Fire Precinct (employer) on January 7, 1992, alleging violations of RSA 273-A:5 I (a), (c), (d) and (g). The employer filed an answer on January 22, 1992 along with a motion to amend its answer on February 6, 1992. After intervening unit determination issues were heard and resolved under Decision No. 92-46 dated March 6, 1992, this matter was scheduled for and heard by the Board on June 16, 1992.

The original ULP charge filed in this case alleged that the employer (1) retaliated against an employee for union activity, (2) attempted to and did eliminate this employee's position for the purpose of bringing the number of positions in the unit to fewer than ten, and (3) acted in a manner to "have a chilling effect on other employees in the unit." Representatives of both sides agreed that the second and third of these issues had been resolved by intervening Board action relative to the status and composition of the proposed bargaining unit. Thus, this matter proceeded before the Board on the first (retaliation) issue only.

FINDINGS OF FACT

1. The East Derry Fire Precinct, Town of East Derry is a public employer of firefighters and other employee(s) as defined by RSA 273-A:1 XI.
2. The Professional Firefighters of East Derry is a labor organization seeking to obtain status as a certified bargaining agent under RSA 273-A:10 in an election scheduled for June 24, 1992.
3. The bargaining unit directed by order of this Board on March 6, 1992 consists of firefighters, lieutenants, captains, and clerk/dispatcher.
4. Nancy Rubino was employed as clerk/dispatcher from September of 1988 until her position was abolished effective January 1, 1992 by action of the East Derry Fire Commissioners. She was given six (6) weeks of severance pay.
5. Rubino was responsible for assisting the Administrative Assistant, dispatching, typing, filing, tracking hours, preparing payroll and attending Commissioner meetings. In September of 1991, the Chief inquired of Rubino if she had joined the union. She responded affirmatively. The following day Rubino was called at home by the Administrative Assistant and told that the locks on the desk (shared between the Administrative Assistant and Rubino who did not have overlapping work hours) would be changed and she would no longer have access to it because she had joined the union. Letterhead paper was also locked up and she no longer attended Commissioners' meetings after the Chief's inquiry.
6. After she was laid-off, Rubino attended a union meeting which the Chief entered, told her that she was no longer a member of the department, and directed her to leave the premises. She did,

notwithstanding the fact that she remained a member of the union even though she was no longer an employee.

7. Rubino's performance reports dated February 1, 1989, February 27, 1990 and March, 1991 showed only ratings of "G" (Good) or "E" (Excellent), with the preponderance of the ratings in the excellent category. The elimination of the part-time clerk/dispatcher's position was unrelated to Rubino's job performance.
8. The employer has "managerial policy within the exclusive prerogative of the public employer" reserved unto it under RSA 273-A:1 XI which includes but is not limited to "the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions." The elimination of the part-time clerk/dispatcher's position effective January 1, 1992, was taken under and protected by RSA 273-A:1 XI because there was insufficient evidence of any impermissible nexus between the job elimination and the incumbent's union activities which would have been violative of RSA 273-A:5 I (a), (c), (d) or (g).


ORDER

This Board finds that:

- 1) No unfair labor practice has been committed.
- 2) The charge of unfair labor practice is hereby DISMISSED.

So ordered.

Signed this 24th day of June, 1992.


EDWARD J. HASELTINE
Chairman

Chairman Edward J. Haseltine presiding. Member Richard W. Roulx concurring. Member E. Vincent Hall dissenting.