



NH Supreme Court declined appeal of this decision on January 31, 1994, Supreme Court No. 93-644.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAMPTON FIRE OFFICERS ASSOCIATION:
LOCAL 3017, I.A.F.F.

Complainant

v.

TOWN OF HAMPTON

Respondent

CASE NO. F-0110:5
DECISION NO. 93-93

HAMPTON FIREFIGHTERS, LOCAL 2664

Complainant

v.

TOWN OF HAMPTON

Respondent

CASE NO. F-0118:7

HAMPTON POLICE ASSOCIATION, INC.

Complainant

v.

TOWN OF HAMPTON

Respondent

CASE NO. P-0719:11

STATE EMPLOYEES ASSOCIATION OF
NEW HAMPSHIRE, SEIU, LOCAL 1984

Complainant

v.

HAMPTON BOARD OF SELECTMEN

Respondent

CASE NO. S-0379:3

APPEARANCESRepresenting Hampton Fire Officers and Firefighters:

Glenn R. Milner, Esq., Counsel

Representing Hampton Police Association:

J. Joseph McKittrick, Esq., Counsel

Representing State Employees Association:

Ward P. Freeman, Field Representative

Representing Town of Hampton:

Thomas Flygare, Esq., Counsel
Renny Perry, Negotiator

Also appearing:

Mark Ouellette, Hampton Fire Dept.
Paul Powell, Town of Hampton
Hunter F. Riesberg, Town of Hampton
Arthur J. Moody, Town of Hampton
Randall Noyes, S.E.A.
William Murray, Hampton Fire Dept.
David Spainhower, Hampton Public Works
Daniel Florent, Hampton Police
Robert W. Regan, Hampton Fire Dept.
John D. Fincher, Hampton Police Dept.
John Stevens, Hampton Fire
Daphne Sterling
Grace Murphy, Fosters Daily Democrat
Bruce D. Philbrick, Hampton Fire Dept.
Gloria Dim, Atlantic News
David E. Jane, Hampton Firefighters

BACKGROUND

This case involves four separate unfair labor practice (ULP) complaints which were consolidated for hearing before the PELRB. The State Employees Association (SEA), acting on behalf of Town of Hampton public works employees, filed its ULP on December 7, 1992 alleging violations of RSA 273-A:5 I (e) and (g). The Town of Hampton (Town) filed its answer on December 22, 1992 along with a cross-complaint alleging violations of RSA 273-A:5 II (d) and (f). The Hampton Fire Officers Association (FOA) filed a ULP on January 5, 1993 alleging violations of RSA 273-A:5 I (e) and (g). The Town filed its answer on January 20, 1993. The Hampton Firefighters,

Local 2664 (Firefighters) filed a ULP on January 21, 1993 also alleging violations of RSA 273-A:5 I (e) and (g). The Town filed its answer on February 5, 1993. The Hampton Police Association, Inc., (HPA) filed a ULP on January 27, 1993 alleging violations of RSA 273-A:5 I (e) and (g). The Town filed an answer and counterclaim on February 11, 1993. Meanwhile, the Firefighters filed to consolidate the hearings in these matters, representing agreement of the other complainants to this consolidation. The cases were so consolidated and set for hearing on May 6, 1993.

FINDINGS OF FACT

1. The Town of Hampton is a "public employer" of personnel employed by its Fire, Police and Public Works departments, as contemplated by RSA 273-A:1 X.
2. Hampton Fire Officers Association, Local 3017, IAFF, AFL-CIO, is the duly certified bargaining agent for fire officers employed by the Town.
3. Hampton Firefighters, Local 2664, IAFF, AFL-CIO, is the duly certified bargaining agent for firefighters employed by the Town.
4. The Hampton Police Association, Inc., is the recognized bargaining agent for police officers employed by the Town.
5. The State Employees Association of New Hampshire, SEIU Local 1984, AFL-CIO, is the duly certified bargaining agent for public works employees employed by the Town.
6. All four (4) bargaining units had collective bargaining agreements (CBA's) which were due to expire on March 31, 1993.
7. All four bargaining units were in the process of negotiating for successor CBA's during the summer or fall of 1992, the SEA having filed a demand to bargain on July 15, 1992 followed by the other three (3) bargaining units which filed similar notices between August 12, 1992 and October 2, 1992.
8. On October 13, 1992 presidents of each of the four unions representing each bargaining unit met with at least four of the Board of Selectmen. Union presidents present were David Spainhower for public works employees, Robert Regan for the FOA, David Lang for the Firefighters, and Daniel Florent for the HPA.

9. During the course of the October 13, 1992 meeting, the unions presented proposals which would have extended their CBA's for one year. David Lang testified that this was inclusive of step increases otherwise provided for in the about-to-expire CBA's. Lang claims to have submitted a written agreement to the selectmen on October 13, 1992; however, there is no evidence that a formal tentative or final agreement was either initialed or signed by the parties. Testimony from David Spainhower confirmed that no document was signed or initialed on October 13, 1992.
10. Selectmen Arthur Moody, who is currently the chairman, testified that the parties agreed to a one year extension of the CBA's but that this was not a final and binding agreement on October 13, 1992. Selectmen (and former Chairman) Paul Powell testified confirming that the selectmen did entertain a proposal to maintain the status quo for an additional year but maintaining that the October 13, 1992 meeting was neither a negotiating session nor a meeting when the selectmen intended to finalize contract negotiations.
11. Notwithstanding the events of the October 13, 1992 meeting, on October 27, 1992, the selectmen voted against the aforesaid one year contract extensions by a vote of 3 to 2.
12. None of the discussions or alleged agreements referenced in the foregoing findings has ever been reduced to writing as contemplated under RSA 273-A:4.

DECISION AND ORDER

Based on the testimony presented at hearing by witnesses from both sides, we conclude that the parties had a meeting of the minds on October 13, 1992 and had formulated an intent at that time to extend the terms of the collective bargaining agreements due to expire on March 31, 1993 another year, to March 31, 1994. Given the preponderance of the evidence of this intent and notwithstanding the fact that the parties failed to record these intentions in written form, be it contract or tentative agreements, it is that intent which must prevail. By this decision we do not intend to encourage parties to conduct their negotiations in a cavalier or careless manner. To the contrary, we firmly believe that the negotiations process is enhanced by the memorialization of tentative agreements and that litigation such as occurred in this case might have been avoided had they been used.

We find the employer's conduct of failing to seek approval of the parties' agreement of October 13, 1992 to have been violative of the obligations imposed by RSA 273-A:5 I (e). By way of remedy, we direct that the contracts in question be extended through March 31, 1994 as contemplated by the parties, noting, however, that any "cost items" associated therewith must be presented to the legislative body before they can become effective.

So ordered.

Signed this 16th day of July, 1993.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and E. Vincent Hall present and voting.