



NH Supreme Court declined of this decision on January 23, 1995, Supreme Court Case No. 94-472.

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

MANCHESTER POLICE PATROLMAN'S
ASSOCIATION

Complainant

v.

INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS

Respondent

CASE NO. P-0706:25

DECISION NO. 94-14

APPEARANCES

Representing Manchester Police Patrolman's Assoc.:

Glenn R. Milner, Esq.

Representing International Brotherhood of Police Officers:

Thomas Greene, Esq.

Also Appearing:

Edward J. Kelley, Manchester Police Patrolman's Assoc.
IBPO Local 394

BACKGROUND

The Manchester Police Patrolman's Association (MPPA) filed a Petition for Change of Affiliation under Rule PUB 301.05 (a) on November 2, 1993 requesting the PELRB to modify the recognition of the exclusive bargaining representative from Local 394 of the International Brotherhood of Police Officers (IBPO), which was so recognized under Chapter 490:3 on December 7, 1976, to the MPPA, an independent and unaffiliated labor organization. The IBPO filed exceptions to the MPPA's petition on November 19, 1993 after which this matter was heard by the undersigned hearing officer on January 18, 1994. The record was held open until February 1, 1994 in order for the MPPA to provide written certification of its internal union

vote held on August 13, 1993 to the IBPO and the PELRB.

FINDINGS OF FACT

1. On December 7, 1976, International Brotherhood of Police Officers, Local 394 was recognized under Chapter 490:3, N.H. Laws of 1975, as exclusive representative for "all regular full time Police Patrolmen and regular full time Policewomen, all regular full time Police Detectives, all regular full time Humane Officers and all regular full time Parking Control Officers" as more specifically set forth in the parties' agreement for the period February 21, 1975 through December 31, 1976.
2. As a "grandfathered" unit under Rule PUB 301.01, no certification election was ever conducted to designate an exclusive bargaining agent for this unit.
3. By-Laws for IBPO, Local 394 were approved initially on June 5, 1976 (MPPA Exhibit No. 1). Article I, Section 1 provided that "the name of this organization is the International Brotherhood of Police Officers, Local 394." Article XI, Section 1 thereof provided "all members will be notified at least ten days prior to all meetings or proposed changes in the by laws." Article XII, Section 1 provided, "These by laws will be amended only upon a two-thirds vote of the members voting."
4. The MPPA represents that certain of its officers conducted informational meetings with the membership on June 17, 1993 (at 8:30 a.m. and 4:30 p.m.) and June 23, 1993 (also at 8:30 a.m. and 4:30 p.m.) relative to a proposal to amend the by laws to change the affiliation from the IBPO to the MPPA.
5. The MPPA also represents that it held a meeting on August 13, 1993, also in two increments, after the giving of the required ten days' notice, at which time a secret ballot election was conducted on the issue of whether unit members wanted to continue their affiliation with the IBPO.
6. Union President Edward Kelley stated that he was present for the counting of ballots at the conclusion of the two meetings held on August 13, 1993. He testified that 39 ballots were cast for the proposition of terminating the IBPO affiliation while 4 ballots were cast for the proposition of

keeping the affiliation.

7. The MPPA asserts that the 39 to 4 vote on August 13, 1993 constitutes the "two-thirds of the members voting" requirement of Article XII of the by laws. The IBPO asserts that there are 140 members in the bargaining unit, that the MPPA's petition has not been supported by a sufficient number of bargaining unit members, and that, "notwithstanding the purported amendment of the by laws," IBPO Local 394 "has not been effectively decertified as the exclusive bargaining representative."

DECISION AND ORDER

The record in this case shows that the IBPO was recognized under a "grandfather" clause or procedure recognized both by Chapter 490:3 and PELRB Rule PUB 301.01. Since no formal certification election was ever requested or conducted, there is no action by the PELRB which requires decertification. What was accomplished administratively as a business matter internal to the bargaining unit's functioning and activities can be undone in a similar manner. Rule PUB 301.05 (a) contemplates this when it refers to "the removal of any such exclusive representation from affiliation with any such [national, regional, state or local] organization."

From the record and testimony presented, it appears that the MPPA has (1) "complied with the internal rules of the exclusive representative" (Finding No. 3); (2) afforded members in the bargaining unit "a reasonable opportunity to be informed of the proposed change in status or organizational form or affiliation and have had the opportunity for appropriate input into that decision... by direct vote" (Findings 4, 5 and 6); and (3) has not changed the organizational structure of the bargaining unit "materially" from what existed prior to the August 13, 1993 internal union election.

The MPPA's Petition for Change of Affiliation should be and hereby is GRANTED.

So ordered.

Signed this 15th day of February, 1994.



PARKER DENACO
Hearing Officer