



NH Supreme Court affirmed this decision on July 18, 1990, Slip Opinion No. 89-132. 133 N.H. 389 (1990).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EMPLOYEES OF THE SULLIVAN COUNTY NURSING HOME

Petitioners

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 93

Respondent

CASE NO. A-0513:11

DECISION NO. 88-32

APPEARANCES

Representing the petitioning employees:

Dorothy Nies, Dietary Aide
Frederic I. Reno, Boiler Engineer

Representing Council 93, AFSCME:

James J. Barry, Jr., Esq.

Also appearing:

James C. Anderson, Staff Representative, AFSCME
Alan Hall, Esq.
Mary Louise Horn, Nursing Home Administrator
Robert Hemenway, Business Manager, Sullivan County
Anthony Maiola, County Commissioner
Richard Breed, Asst. Administrator
Carol Brown, AFSCME
Stephanie Mills, AFSCME
Sandra Dunn, AFSCME

BACKGROUND

A second petition for decertification was filed by employees of the Sullivan County Nursing Home on January 2, 1988. The first petition was dismissed as untimely on November 30, 1987.

Counsel for AFSCME filed a Motion to Dismiss stating as grounds for dismissal that: (1) the petitioners had failed to comply with the requirements of RSA 273-A; (2) the petition did not include the required number of individual signature cards; and, (3) the petition was an outgrowth of illegal participation by management.

Attorney for Sullivan County filed a Motion for Sullivan County Nursing Home to be made a party to proceedings relation to and arising

out of the captioned petition for decertification.

A hearing on the merits of the petition was held in the Board's office on February 23, 1988 with all parties represented.

FINDINGS OF FACT

1. The decertification petition was filed after expiration of the agreement by and between the parties and is timely.
2. The petition was accompanied by the required percentage of individual signature cards from employees alleging they no longer wish to be represented by Council 93, AFSCME, in accordance with PELRB Rules and Regulations Pub 301.04.
3. No testimony or evidence was presented to prove the allegation of illegal management participation.
4. Decertification is a matter between the employees and the Union which represents them, however in the instant case, AFSCME alleged illegal employer involvement therefore Counsel for the County was permitted to appear as a witness to protect the interests of the County with the introduction of necessary testimony and evidence.

DECISION AND ORDER

The decertification petition filed by employees of the Sullivan County Nursing Home is GRANTED.

Since no unfair labor practice has been brought against the Public Employer, Sullivan County Nursing Home, the Motion to Intervene in this case is DENIED.

A pre-election conference will be scheduled for 10:00 a.m., Friday, March 25, 1988 at the Sullivan County Nursing Home and election to be held as expeditiously as possible after that date.



EDWARD J. HASELTINE, Chairman

Signed this 24th day of March, 1988.

By unanimous vote. Chairman Haseltine presiding. Members Richard W. Roulx and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun

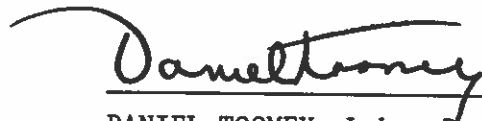
CONCURRING OPINION:

I concur with the above result because the Union (AFSCME) was not able to substantiate its claim that less than the 30% of the bargaining unit members signed the petition cards. Secondly, AFSCME failed to present witnesses or evidence to support its claim of employer

involvement in the process. Although the allegations were not proven, I feel strongly that participation by the attorney for the County in the hearing constituted de facto legal representation of the petitioning employees. Counsel not only acted as a witness, as allowed by the Board, but cross-examined the petitioning employees and otherwise acted as an attorney.

It seems prejudicial that the bargaining unit employees are required to pay for a lawyer and a representative through their union dues, while the petitioning employees are provided "free" legal representation by the County and ultimately by the taxpayer.

The Board has never allowed the employer to be a party in a decertification proceeding and it is impermissible for the employer to advise any group of employees. Employers have the right to decide on representation without employer influence in this case.



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DANIEL TOOMEY, Labor Representative