



Even if further argument were in order, however, TOH's argument should be rejected as wanting in merit. TOH insists that it is entitled to summary disposition as a matter of law due to Applicants' failure to incorporate in their response a statement of facts. Applicants disagree.

The reason no statement of facts in dispute was appended to the response is that nothing in the rules requires the Applicants to counter conclusory or argumentative assertions which the intervenor chooses to label "fact." The label cannot magically turn argument into fact.

The first paragraph of TOH's "Statement of Material Facts As to Which the Town Contends There Is No Genuine Issue to Be Heard" is an argument as to a possible reading of NHRERP, with a citation to a supposedly supporting document.

The second paragraph is in part a statement of fact which Applicants do not controvert. Neither the Applicants nor the State of New Hampshire have obtained any Letters of Agreement that Hampton teachers will in fact carry out their duties to oversee protective actions for the Hampton students in the event of an emergency at Seabrook. TOH's assertion that "other reasonable proof" is lacking is an argument which Applicants countered in their response under the heading "Argument." The third paragraph of TOH's statement of "facts" is the same save that it goes to health care workers instead of teachers.

The fourth paragraph recites a statement of one Herbert Moyer. Applicants do not disagree that Mr. Moyer made that statement and have no reason to dispute the number of discussions or interviews Mr. Moyer claims to have conducted as of the dates indicated. Applicants have shown in their response why such interviews or discussions are not relevant to the contention.

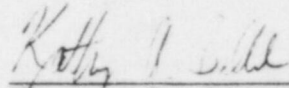
The fifth paragraph repeats a statement in a petition. Applicants do not disagree that the statement may be found in the petition. As to the relevance, probative value, or admissibility of such a statement -- which TOH labels "evidence" -- Applicants rely on their counter-arguments.

The sixth paragraph sets forth TOH's reading of NHRERP Revision 2 Volume 2 Appendix G. TOH's reading does not rise to the level of a "fact."

In sum, very little of TOH's "Statement of Material Facts" is factual; for the most part TOH merely argues its case. Applicants properly countered TOH's arguments in Applicants' response. TOH cannot defeat Applicants' arguments by its declaration that TOH's arguments must perforce be admitted as facts because they were so labeled.

TOH's motion to permit further argument in support of  
its earlier motion for summary disposition should be denied.

By their attorneys,



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CERTIFICATE OF SERVICE

I, Kathryn A. Selleck, one of the attorneys for the Applicants herein, hereby certify that on April 30, 1987, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, where indicated, by depositing in the United States mail, first class postage paid, addressed to):

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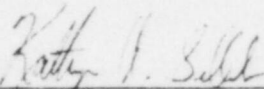
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