



NH Supreme Court dismissed appeal of this decision on June 21, 1994, Slip Opinion No. 90-598.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

_____ :
HILLSBOROUGH COUNTY SHERIFF'S :
DEPARTMENT :

Complainant :

v. :

AMERICAN FEDERATION OF STATE, :
COUNTY AND MUNICIPAL EMPLOYEES, :
LOCAL 3657, AFL-CIO :

Respondent :
_____ :

CASE NO. A-0428:56

DECISION NO. 93-163

APPEARANCES

Representing Hillsborough County:

Carolyn Kirby, Esq.

Representing AFSCME:

James C. Anderson, Staff Representative

Also appearing:

Richard W. Roulx, Hillsborough County
Walter C. Morse, Hillsborough County Sheriff's Office
Roger Matte, Hillsborough County Membership

BACKGROUND

Hillsborough County (County), by and for its Sheriff's Department, filed unfair labor practice (ULP) charges against the American Federation of State, County and Municipal Employees, Local 3657 (Union) on June 4, 1993 alleging violations of RSA 273-A:5 II (f) and (g) relative to the Union's wrongfully demanding to arbitrate and interfering with management's right to reorganize. The Union filed its answer on June 15, 1993. This case was then heard by the undersigned hearing officer on October 28, 1993 after intervening continuances in August and September sought and obtained by the parties.

FINDINGS OF FACT

1. Hillsborough County is a "public employer" of personnel in its Sheriff's Department as defined by RSA 273-A:1 X.
2. The American Federation of State, County and Municipal Employees, Local 3657 is the duly certified bargaining agent for personnel employed by Hillsborough County at its Sheriff's Department.
3. The County and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1988 through June 30, 1991, continuing "from year to year thereafter unless written notice of desire to modify, cancel or terminate this Agreement is served by either party on the other at least 120 days prior to the date of expiration...." No termination notice has been sent. As recently as November 30, 1992, the County and the Union signed a two page addendum to the CBA on disciplinary procedures. Item A.4 of that addendum provides that "no employee shall be penalized, disciplined, suspended or discharged without just cause." The bargaining unit includes all full-time and regular permanent part-time employees in the job classifications of Clerk Typist I & II, Secretary I & II, Account Clerk I, Certified Deputy Sheriff, Communication Dispatch and Special Deputy Sheriffs.
4. On January 6, 1993, Walter Morse replaced Louis Dupette as sheriff of Hillsborough County. Morse thereafter proceed to reorganize the department. Part of that reorganization involved the elimination of rank among deputy sheriffs as had existed during the Durette administration.
5. On January 22, 1993, the United State District Court for the District of New Hampshire issued a preliminary injunction (Docket C-93-13-L) "restraining the defendant [Morse] from discharging the plaintiffs [six discharged deputes] and they are ordered reinstated immediately." They were, but as deputies without rank which, coincidentally, lessened their former rate of compensation. (County Ex. No. 1)
6. On February 2, 1993, the Union filed a "class action" grievance alleging contract violations (Article XVIII, Wage Rates) when certain bargaining unit employees "were reduced in rank and/or reduced in wage scale" on and after January 6, 1993. (County Ex. No. 3) Morse denied this grievance in a letter to Union Steward William Barry in which he said, in part,

"In my reorganization and restructuring of [the department] all rank was initially eliminated because the department was 'top heavy' with ranking deputies. As I continue my review of [the department], promotions to supervisor will be made where needed. Employees not in supervisory capacity will not have supervisory titles, and thus will not receive supervisors's pay." (County Ex. No. 4) Thereafter, the Union filed for arbitration under the CBA.

7. By memo of February 22, 1993 (County Ex. No. 6), Morse announced management duty assignments involving Larry Cronin at Civil Division, Al Lambert and Andy Anderson at South and North Court Security, Terry Colls at technical services and Chris Connelly at the Warrants Division. These appointments were explained in a letter from Morse to Shawn Jasper, Hillsborough County Executive Committee, dated February 24, 1993. (County Ex. No. 7) The restructuring eliminated lieutenant (a non-unit position), sergeant (Deputy II) and corporal positions in the administrative, civil, transport and warrants divisions, thus eliminating the situation where 15 or 16 deputies with rank were overseeing the functions of 10 to 12 deputies without rank, according to testimony offered by Morse.
8. The arbitration of this matter was scheduled for June 1, 1993. At that hearing, Morse raised the issue of arbitrability of the grievances. Thereafter the parties agreed that the Sheriff/County would file these ULP charges alleging a wrongful demand to arbitrate by the Union.
9. The foregoing restructuring caused bargaining unit members who were formerly sergeants (Deputy II personnel) to lose compensation when they were retained/rehired at the non-rank position of deputy (i.e. as Deputy I personnel).

DECISION AND ORDER

The principles and the facts of the case are both clear, even though they point to differing conclusions. As to principles, the County is protected by statute as to its right to control managerial policy. Under RSA 273-A:1 XI, "managerial policy" is defined to include "the programs and methods of the public employer, ...the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions." (Emphasis added.) Conversely, as to facts, it is undisputed that sergeants, or Deputy II's as they are referenced under the CBA, have sustained a loss in

compensation as the result of being removed from rank status as sergeants, at pay grade 17, and reduced to and/or rehired as a "regular" deputies at pay grade 16. Notable in these proceedings is the directive of the District Court (Finding No. 5) to rehire certain plaintiffs. While it is unchallenged that that directive has been complied with, there is no evidence that either party has returned to court to complain that the rehiring/reinstatement rate was inappropriate.

Organization of sheriff's departments is a matter of prerogative conferred under RSA 104:3 whereby a sheriff "may appoint so many deputies as he thinks prefer..." (Emphasis added). This statutory authority coupled with the protection of RSA 273-A:1 XI, above, unequivocally establishes the right of the sheriff to determine the size of his staff of deputies. This right, a statutory one, prevails over rights asserted by the union, whether by past practice or otherwise, because past practice claims and/or wage claims under Article XVIII of the CBA, which references the wage rates for Deputies I and II, have been made subordinate to statutory authority by Article 1.7 of the CBA. Article 1.7 of the CBA provides that "it is specifically agreed by the parties hereto that any rights, duties or authority existing by virtue of the N.H. Revised Statutes Annotated or other law, including, but not limited to, Revised Statutes Annotated Chapter 104, shall in no way be abridged or limited by any of the provision of this Agreement."

This analysis results in a finding that the Union breached the CBA by insisting on proceeding to arbitration in this case. This is violative of and constitutes a ULP under RSA 273-A:5 II (f). The Union is directed to CEASE AND DESIST from proceeding to arbitration on this case. No analysis is offered on the issue of impact bargaining because there is no evidence that one side made a demand on the other for this process.

So ordered.

Signed this 29th day of December, 1993.



PARKER DENACO
HEARING OFFICER