

Appeal to NH Supreme Court
withdrawn on March 3, 1995, NH
Supreme Court Case Nos.
92-521, 92-597, 93-710.



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME LOCAL 3657/BERLIN POLICE:
DEPARTMENT

Complainant

v.

CITY OF BERLIN

Respondent

CASE NO. A-0401:12

DECISION NO. 92-126

APPEARANCES

Representing AFSCME Local 3657:

Harriett Spencer, Staff Representative

Representing City of Berlin:

Kathleen C. Peahl, Esq., Counsel
Jack P. Crisp, Jr., Esq., Counsel

Also appearing:

Christine A. Desmarais, City of Berlin
Alan Tardif, City of Berlin
Richard Morin, City of Berlin

BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 3657, Council 93 (Union) on behalf of the Berlin Police Department Employees filed unfair labor practice (ULP) charges against the City of Berlin (City) on March 26, 1992 alleging violations of RSA 273-A:5 I (g) and (h). The City filed its answer on April 9, 1992 and a Motion to Stay Proceedings before this Board on May 5, 1992 because of what have become concurrent proceedings in Coos County Superior Court. This matter was then scheduled for and heard by the Board on July 7, 1992.

FINDINGS OF FACT

1. The City of Berlin is a public employer of employees in its Police Department, as defined by RSA 273-A:1 X.
2. AFSCME, Local 3657 is the duly certified bargaining agent of certain employees of the Berlin Police Dept.
3. The City and AFSCME are parties to a collective bargaining agreement (CBA) effective for the term July 1, 1990 until June 30, 1993. Article XVIII, Section 1 (5) of the CBA provides for a "final and binding" arbitration procedure for grievances which remain unsettled after being processed at lower levels.
4. On February 5, 1991, Lt. Richard Grondin of the Berlin Police Department was suspended without pay for an unspecified period of time for violations of three (3) Rules of the Berlin Police Department. The Union grieved this suspension on behalf of Grondin.
5. This grievance proceeded to arbitration before Arbitrator John Van N. Dorr, III on September 10, 1991, December 16, 1991, and December 31, 1991 on the stipulated issued of just cause for the foregoing suspension.
6. Arbitrator Dorr issued his Award on March 4, 1992. Calling the indefinite suspension "excessive," Dorr modified it to ninety (90) days without pay or benefits after which Grondin was to have been reinstated and made whole "to run through the date when he is again on the Department's payroll receiving full benefits under the Agreement."
7. Arbitrator Dorr's award has not been implemented by the City between the date it was issued and the date of hearing before this Board.
8. Grondin was to have been terminated on May 31, 1991; however, he filed for and obtained an injunction barring that termination in Coos County Superior Court where proceedings are still pending in this case.

DECISION AND ORDER

This case involves the simple issue of the implementation of an arbitrator's award under a contract (CBA) provision which calls for that award to be final and binding on the parties. The stipulated issue before the arbitrator was that of a suspension. The arbitrator's finding was limited to that suspension. It was not cluttered or barred by collateral proceedings elsewhere. Likewise, the ULP pending before us should not be barred or

influenced by collateral proceedings. We look only to the obligation of the parties under the CBA relative to the arbitration process.

The parties have agreed, by their CBA, to a final and binding arbitration procedure. They have engaged in that procedure and obtained an award. Only after that award was rendered has one side, the City, decided not to implement it. This conduct is clearly contrary to what is expected and contemplated under Article XVIII of the CBA. Failure to abide by the CBA is a violation of RSA 273-A:5 I (h).

We direct:

1. That the City violated the CBA and thus RSA 273-A:5 I (h) by refusing to implement the arbitrator's award of March 4, 1992, and:
2. That the City shall forthwith implement the foregoing arbitrator's award.

So ordered.

Signed this 27TH day of JULY, 1992.


EDWARD J. HASELTINE
Chairman

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