



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND :
MUNICIPAL EMPLOYEES, LOCAL #1801, AFL-CIO, :
PELHAM POLICE. :

Complainant :

CASE NO. A-0465:4

AND :

DECISION NO. 81-65

BOARD OF SELECTMEN, TOWN OF PELHAM :

Respondent :

APPEARANCES

Representing the complainant,
AFSCME, Local #1801, Pelham Police

David K. Pinsonneault, Esq.
James Hardy
Eugene Briggs
James Anderson, President, Council #68

Representing the Board of Selectmen

Thomas J. Mahon, Administrative Assistant
William G. Collis
Robert Leslie, Esq., Counsel

BACKGROUND

AFSCME, Council 68, the exclusive representative of the police bargaining unit in the Town of Pelham, on May 13, 1981 filed improper practice charges against the Town of Pelham and it's Board of Selectmen alleging the town had terminated the employment of one James E. Hardy in violation of RSA 273-A:5,

"It shall be a prohibited practice for any public employer: (h) To breach a collective bargaining agreement; and (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule."

in said termination Hardy was considered by the town as a probationary employee.

This case came on for hearing, June 25, 1981 before PELRB at which time testimony was presented and certain agreements and stipulations reached between the parties. At the conclusion of the hearing, PELRB issued an oral order as follows,

- "1. PELRB would not rule on the unfair labor practice charge but would retain jurisdiction of the issue, without prejudice to either party.
2. It was apparent that Patrolman Hardy and AFSCME had only that day become aware that the Town did not contest the membership of Patrolman Hardy in the bargaining unit.
3. In view of the agreement by Counsel for the Town that Patrolman Hardy was in fact a member of the bargaining unit, the matter was remanded to the parties for pursuit under the grievance procedure outlined in the existing agreement."

which was later followed by written Order No. 81-21 Case No. A-0465:3 dated August 24, 1981. An oral order was issued in this case as the negotiated agreement between AFSCME, Council 68, and the Town of Pelham had been signed and made retroactive to April. PELRB retained jurisdiction of the case pending the parties agreement to pursuit of the grievance procedure as stated in Article XVII of the contract.

It had been determined by PELRB at the June 25th hearing and agreed by the Town that Hardy was a member of the bargaining unit and was entitled to utilize the provisions of the contract, specifically the grievance procedure.

The matter was in fact grieved in accordance with Article VII of the contract on June 26, 1981 when Union Steward, Eugene Briggs filed an official grievance with Hardy's immediate supervisor, Chief of Police, Ralph S. Boutwell, which complied with Par. 17.6, Step 1, of the contract. The contract states in Par. 17.6, Step 2,

"If the grievance is not resolved to the grievant's satisfaction at Step 1, an appeal may be filed with the Selectmen in writing within five (5) days of receipt of the decision at Step 1."

Resolution of Step 1 was in fact accomplished by the Chief of Police in his decision in the matter quoted in part below,

"My decision is based on the following:

Section 2.1 - This establishes James Hardy's position as a full-time patrolman represented by the Union in relation to conditions of employment.

Section 3.1 - Because James Hardy was a full-time patrolman, in my opinion, as of 5/15/79, he should not have been dismissed for the reason based on probationary time.

Section 3.2 - The Town violated the working conditions agreed to where, in my opinion, James Hardy was a full-time officer, not on probation.

Section 6.1 - In my opinion, James Hardy was hired as a full-time patrolman/dispatcher on May 15, 1979, therefore, he was no longer on probation.

Section 6.2 - James Hardy was not on probation.

Section 18.1 - James Hardy never received any disciplinary action.

Since I was not included in negotiations, I feel I acted to the best of my ability within the guidelines agreed to in the Union contract and in the best interest of the Town in recommending James Hardy be reinstated immediately. In my opinion, James Hardy was not on probation at the time of dismissal, he was a full-time officer, appointed May 15, 1979."

The Chief of Police was acting under authority of the contract duly signed by the selectmen.

The PELRB finds that based on the evidence presented at the initial hearing, Hardy is not a probationary employee as specified by 273-A:1, Section X,(d), but a full-time patrolman, member of the bargaining unit.

On July 16, 1981, AFSCME, Council 68, Local 1801, refiled ULP charges against the town alleging failure to comply with the resolution reached by the Chief in Step 1 of the grievance procedure.

On August 6, 1981, Counsel for the town, by letter to the Board, objected to the newly filed charges on practically the same basis as offered in the first hearing and requested a pre-hearing conference which he felt could resolve the case if Hardy's status as a permanent or probationary employee was then determined by the Board.

At the December 3, 1981 meeting, PELRB ruled that when the case was remanded to the parties for pursuit under the grievance procedure, the permanent or probationary issue was resolved. The town had agreed that Hardy was in fact a member of the bargaining unit and therefore entitled to resolution under the grievance procedure.

The town raised the issue of Hardy's probationary status at the time of the alleged offense; i.e., when he was employed by the town as a permanent full-time dispatcher/patrolman, as of May 15, 1979, and in various capacities since December 13, 1977 and failed in its burden to prove the temporary or probationary status of said employee.

FINDING OF FACTS

-- Patrolman Hardy was a permanent employee of the Pelham Police Department having served in various capacities; i.e., full-time dispatcher, full-time dispatcher/patrolman and full-time patrolman from May 13, 1980.


-- Compliance with the negotiated contract language was in fact accomplished by resolution of the grievance by the Chief of Police's reinstatement of Hardy as a full-time patrolman by letter dated July 1, 1981.

-- The Town of Pelham are found to have committed unfair labor practice under RSA 273-A:5 in its termination of Hardy as a patrolman in the Pelham Police Department.

DECISION & ORDER

After reviewing all the evidence and testimony presented, the Board rules as follows:

1. PELRB having committed this case by prior order to the parties for resolution under the grievance procedure, Step 1 to the Chief of Police, and,
2. Resolution having been reached at Step 1 to the satisfaction of the complainant, PELRB orders the immediate reinstatement of Patrolman James E. Hardy in the Pelham Police Department.
3. The request for back pay is hereby denied by the Board as it is unwarranted in view of the employment of the complainant.



SEYMOUR OSMAN, Board Member
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

By unanimous vote. Former Chairman Edward J. Haseltine presided at the original hearing. Members Russell F. Hilliard and Seymour Osman present and voting. Also present, Chairman Robert E. Craig and Executive Director Evelyn C. LeBrun.

Signed this 18th day of December, 1981.