



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 2715

Petitioner

v.

HILLSBOROUGH COUNTY COMMISSIONERS

Respondent

CASE NO. A-0428:11

DECISION NO. 85-21

APPEARANCES

Representing American Federation of State, County and Municipal Employees, Local 2715

Vincent A. Weners, Esq., Counsel
James C. Anderson, Executive Director, AFSCME Council 68

Representing Hillsborough County Commissioners

David Horan, Esq., Assistant County Attorney

Also in Attendance

Adelaide McCafferty
James Gray, AFSCME
H.A. Anderson, Sheriff Dept.

BACKGROUND

Petition alleging unfair labor practice charges against the Hillsborough County Commissioners was filed with the Public Employee Labor Relations Board on July 12, 1984. Petition alleges that the County has entered into an agreement with Local 2715 and in that agreement a grievance procedure was established leading finally to binding arbitration and yet the Commissioners of Hillsborough County have, in a letter sent to Local 2715, refused to comply with the arbitrator's award stating that they had not the authority to do so. The Union claims that the contract is clearly applicable and that the Commissioners are bound to follow the arbitrator's award and reinstate a Deputy Sheriff, one Adelaide McCafferty.

The County, in its answer to the unfair labor practice charge, admitted the existence of a collective bargaining agreement with AFSCME Local 2715 but argued that there are numerous special provisions in the agreement dealing specifically with the Sheriff. Respondents further admit that Article 15, Section 15.1 C of the agreement provides for an appeal process wherein grievances denied by the Hillsborough County Sheriff must be presented to Hillsborough Commissioners for their review prior to submission of the grievance to arbitration. The County further argues however that other sections of the agreement eg. Sections 1.7, 5.6, 6.12, 7.8, 8.5, 9.5 and 10.4 limit the contract and reserve the sheriff's statutory rights under RSA 104:27. The County further acknowledges that they and the Hillsborough County Sheriff have agreed to the grievance procedure as described by Article 15 of the agreement. The County argues however that nothing in the grievance procedure or anywhere else in the contract is there an authorization for the reinstatement of any employee terminated by Hillsborough County. The County admits that there is a stalemate but argues that the New Hampshire Supreme Court has never ruled that a sheriff cannot exercise his authority under State Law RSA 104:27. County argues that RSA 104:27 gives the Hillsborough County Sheriff the absolute authority to discharge any deputy sheriff including those members of Local 2715 who are deputy sheriffs. The County further denies any violation of RSA 273-A:5, I (h) as alleged instead they argued they had followed the grievance procedure and decided to deny the grievance filed by AFSCME Local 2715 on behalf of Adelaide McCafferty. The Union took the next step of the grievance procedure and submitted the grievance issue to the American Arbitration Association. The County further argues that the Hillsborough County Sheriff has not waived his statutory rights under RSA 104:27 by signing the agreement currently in effect. Article 16 of the agreement clearly states that if a portion of the agreement is contrary to state law then that portion of the agreement will not be deemed valid or subsisting. The Hillsborough County Commissioners have no statutory authority to order the reinstatement of deputy sheriffs. The County further asks that the petition alleging unfair labor practices be dismissed.

The issue was taken to arbitration and the arbitrator's award was issued on 10/27/84 and the decision of the arbitrator was that the issue was arbitrable and that the termination of Adelaide McCafferty was without just cause. The arbitrator order that Ms. McCafferty be made whole by being reinstated forthwith to her former position of deputy sheriff and to be reimbursed for all back pay lost from the date of discharge to the date of reinstatement without interest minus any interim earnings. She was also ordered to have restored all of the benefits lost including seniority.

A hearing was held on this matter at the Public Employee Labor Relations Board's office in Concord, New Hampshire on February 7, 1985, all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At the hearing a motion was made on behalf of the Hillsborough County Sheriff and Hillsborough County Commissioners to dismiss the petition alleging unfair labor practices on the ground that the petition is faulty in that it does not allege an unfair labor practice but merely asks that the County be ordered to abide by the decision of the arbitrator and that further that the petition in fact does not allege a violation of 273-A:5 and further that the Public Employee Labor Relations Board does not have the authority to order the enforcement of its own decisions since it must bring that petition to the Superior Court for an injunction to compel obedience at the Board's decisions.

The Union objected to the County's motion to dismiss on the grounds that it was a misstatement of the law and requests a hearing to be held on the motion to be scheduled the same day as the hearing of the merits if the Public Employee Labor Relations Board chose to do so.

The Public Employee Labor Relations Board decided to proceed to hearing on motion to dismiss, without restriction.

At the hearing, expert testimony was received from the chief negotiator for the County dealing with the provisions of the contract, specifically Sections 1.7, 5.6, 6.12, 7.8, 8.5, 9.5 and 10.4, all having to do with certain exceptions to the contract in dealing with the sheriff and the deputy sheriffs:

Section 1.7 "It is specifically agreed by the parties hereto that any rights, duties or authority existing by virtue of the New Hampshire Revised Statutes Annotated or other law including but not limited to RSA Chapter 104, shall in no way be abridged or limited by any of the provisions of this agreement." This section clearly prevents anything in this contract from "abridging" any of the provisions of RSA Chapter 104 or other relevant statutes.

Section 5.6 Specifically..."any deputy sheriff designated by the sheriff as a bailiff shall be covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding." This article of the contract stipulates that RSA 104:3 and 27 are not rescinded by this contract.

Section 6.12 "Any employee who is a deputy sheriff shall be covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding. Article Number 6 deals with seniority. This section of the contract clearly means that Article 6 cannot contravene RSA 104:3 and 27.

Section 7.8 "Any employee who is a deputy sheriff is covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding." Again, this article clearly exempts Article 7 (promotions and transfers) from contravening RSA 104:3 and 27.

Section 8.5 "Any deputy sheriff designated by the sheriff as a bailiff shall be covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding." Article 8 deals with holidays. Again clearly, this provision in the contract dictates that Article 8 may not contravene the provisions of RSA 104:3 and 27.

Section 9.5 "Any deputy sheriff designated by the sheriff as a bailiff shall be covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding." Article 9 deals with vacations and again, this article clearly means that Article 9 cannot contravene anything in RSA 104:3 and 27.

Section 10.4 "Any deputy sheriff designated by the sheriff as a bailiff shall be covered by the provisions of New Hampshire RSA 104:3 and 27 this article notwithstanding." Article 10 deals with sick leave and again, this section means that this article of the contract cannot contravene the New Hampshire RSA 104:3 and 27.

While there is no specific language in the contract stipulating that the sheriff agrees to allow a discharge of a deputy sheriff to be grieved, the contract does contain a clear grievance procedure the last step of which is binding arbitration.

This is all contained in Article 15 of the contract. Also during the hearing, the point was made that RSA 104:27 would allow a sheriff to agree to a review of a firing decision even when the law gives the authority for hiring and firing to the sheriff. In final argument, the County argued that the contract cannot modify the law and the union attorney that the grievance procedure in the contract applies to the contract and must be upheld including the decision of the arbitrator to reinstate Ms. McCafferty.

DECISION AND ORDER

It is the decision of the Public Employee Labor Relations Board in this case that:

- (1) RSA 104:27 does not prohibit the sheriff from agreeing in a collective bargaining agreement to a review of the decisions of hiring and firing through the grievance procedure of the contract which they have signed;
- (2) In this particular case, the interpretation of the contract is in dispute and the grievance procedure is the place to resolve such disputes;
- (3) Given that a grievance procedure is required by RSA 273-A and is in place in this case, then we are of the opinion that the grievance procedure must be used to resolve the disagreements. In this particular case, the arbitrator has found that the issue is arbitrable under the contract and has ordered the reinstatement of the deputy sheriff. We concur.

Order to Hillsborough County:

The Public Employee Labor Relations Board hereby orders the effectuation of the arbitrator's award, specifically that Deputy Sheriff Adelaide McCafferty be made whole by being reinstated forthwith to her former position of deputy sheriff and be reimbursed for all back pay lost from the date of discharge to the date of reinstatement without interest minus any interim earnings. She is also to have restored all of the benefits lost including seniority. This decision is participated in by Chairman Craig, Mr. Verney and Mr. Osman.


ROBERT E. CRAIG, CHAIRMAN

Signed this 7th day of March, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Also present and voting, Members Russell Verney and Seymour Osman. Also present, Evelyn C. LeBrun, Executive Director.