



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES, LOCAL 863	:	
	:	
Complainant	:	CASE NO. A-0427:5
	:	
v.	:	DECISION NO. 88-82
	:	
TOWN OF DURHAM, NEW HAMPSHIRE	:	
	:	
Respondent	:	

APPEARANCES

Representing AFSCME, Local 863:

James J. Barry, Esq., Counsel AFSCME
Harriett Casey, Staff Representative AFSCME
James C. Anderson, Staff Representative AFSCME

Representing Town of Durham:

J. Joseph McKittrick, Esq., Counsel
Terry L. Hundley, Town Administrator

Also appearing:

John Wood, Town of Durham
Susan Munroe, Town of Durham
Guy Hodgdon, Town of Durham

BACKGROUND

AFSCME Local 863 (AFSCME) on June 6, 1988 filed charges of prohibitive practices against the Town of Durham, Public Works Department (Town), alleging violations of RSA 273-A:5, I (g), (h), and (i) against an employee, Susan Munroe, in assignment of work upon return from workmen's compensation leave.

The Town through its Attorney stated that the matter had been pursued through another forum, Workmen's Compensation of the Labor Department, and a formal agreement reached and that despite the allegations, the Plaintiff herself had failed to abide by the terms of the agreement reached. Further, that any alleged discrimination charge should properly be dealt with in another forum, the N.H. Human Rights Commission. In addition, if the charge alleged a violation of the existing agreement, the matter should be pursued under the grievance procedure which culminates in final and binding arbitration.

In opening statements, both parties referred to the agreement reached at the Workmen Compensation hearing and offered various interpretations of its content.

Ms. Munroe, a Maintenance Worker III with the Town of Durham, since February of 1986 had been out of work due to an injury sustained on the job on August 24, 1987. She returned to work May 9, 1988 and performed her duties under in the Water Department until June 3, 1988 at which time the Town again put her on Workmen's Compensation. On June 22, 1988, the Town advised her that unless she could work the packer, she could not return to work.

Ms. Munroe alleges that the Town discriminated against her in work assignments because of her pursuit of her case filed with the Human Rights Commission thereby violating the agreement reached in her case.

As a remedy, Local 863 seeks to have Ms. Munroe returned to active employment as a Maintenance Worker III.

Hearing in this matter was held in the Board's office in Concord on September 9, 1988.

Counsel for the Town raised the question of PELRB jurisdiction as the complainant's case had been reviewed and agreement reached with the Department of Labor, Workmen Compensation Division, her case before the Human Rights Commission and access to the Grievance Procedure under the collective bargaining agreement.

Counsel for Local 863 on the jurisdiction question citing an agreement with respect to Ms. Munroe's return to work upon release from her attending physician. During this process, a grievance was filed in accordance with the contract and that "the only reason for this hearing, only, is because the Town willfully breached an agreement reached between the parties."

PELRB at this junction took temporary jurisdiction of the case. Objection was filed by Counsel for the Town and duly noted.

The Department of Labor issued a decision that returned Ms. Munroe to work, evidence was supported by medical exhibits however later modified by a second medical exhibit which qualified her return to work.

Substantial testimony was presented as to the occurrences throughout the entire case with respect to the Workmen Compensation agreement reached between the Town, the insurance carrier, a representative for Ms. Munroe and the Department of Labor.

Physicians reports conflicted as to Ms. Munroe's ability to return to her position as Maintenance Worker III which requires heavy lifting, driving a packer truck and operating pneumatic drills. A second physician's statement submitted upon request from the Town inquiring further into her capabilities to perform specific hard tasks indicated that should Ms. Munroe continue to be employed requiring such physical activity "on a steady basis is an invitation to disaster."

Among the stipulations to the agreement reached between the parties at the Department of Labor was the dropping of the charges filed with the Human Rights Commission. Evidence showed the charges were still on file.


FINDINGS OF FACT

After considering all the evidence and testimony the Board finds it can only consider the charge of violation of RSA 273-A:5, I (a), (d), (g), (h) and (i).

DECISION AND ORDER

1. PELRB declines jurisdiction in this matter and remands the case to the parties for resolution of the agreement reached July 29, 1988 with the N.H. Department of Labor, Workmen's Compensation Division, the Town and the plaintiff.
2. Plaintiff's petition is hereby DISMISSED as having been presented in the wrong forum.

Signed this 13th day of January, 1989.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx, Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.