



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SANDRA LaVERGNE

Complainant

v.

AFSCME, COUNCIL #93, LOCAL 2715

Respondent

CASE NO. M-0635

DECISION NO. 91-22

APPEARANCES

Representing Sandra LaVergne

Thomas Cooper, Esq.

Representing AFSCME Council #93, Local 2715

James C. Anderson, Staff Repr.

Also appearing:

Sandra LaVergne
Robert G. Curran
Stanley E. Beck
Richard W. Roulx, Hillsborough County
Fred Hicks, AFSCME Council #93

BACKGROUND

On September 19, 1990 Sandra LaVergne an employee of Hillsborough County Nursing Home filed an unfair labor practice charge against the certified representative of the employee organization AFSCME Council #93, Local 2715 alleging the union failed to give her fair representation in the processing of a grievance. And further alleges that the union refuses to process a grievance for a member of the bargaining unit. And further stating in the charge that the grievance was involved with a question of job seniority, the qualifications and experience in connection with a job opening within the administrative unit of the Hillsborough County Nursing Home. Further alleging that because she was a non paying dues member of the union, she had failed to receive adequate consideration.

The remedy requested is an order from the PELRB to process the grievance and follow the grievance procedure contained in the existing contract between the AFSCME Council 93 and the Hillsborough County Commissioners with a specific reference to paragraph 6.1 and 6.2 of article 7 of said agreement.

In response to the charge AFSCME Council 93 Local 2715 Hillsborough County Nursing Home employees, the certified representative of the bargaining unit stated as follows: That Sandra LaVergne did hold a position in the bargaining unit of which the union is the exclusive representation. The position in question that is involved in the filing of the grievance or refusal to file grievance was a Account Clerk II. The union alleges that that position was filled in the appropriate manner and through the procedures outlined in the collective bargaining agreement and that the position was posted and as a result of such posting three employees put an application for the position.

Sandra LaVergne was originally given the position by Administrator Curran. As a result of this action by the Administrator the union filed a grievance on behalf of Jacqueline Schechter in accordance with the provisions of the collective bargaining agreement, contesting the filling of the position. And further cited certain paragraphs of the contract, and further alleged at a hearing that had been held for the County Commissioners which was one of the steps in the grievance procedure and the Commissioners agreed with the Union and awarded the position to the full time employee, Jacqueline Schechter.

The award of this position to Jacqueline Schechter was in accordance with the agreement and was a result of a grievance filed by Local 2715.

The Union further responded by stating that the only person who had a right to grieve a promotion based on the Administrators decision is that of a full time employee, Sandra LaVergne was not a full time employee and was a part time employee. The union further alleged that Sandra LaVergne discussed the situation with the President of Local 2715 who indicated to Sandra LaVergne that she would have a difficult time in processing a grievance as there was no indication that her rights had been violated and that no contractual violations existed and further stated that at no time was there any discussion relative to whether the employee was a member of the union or not.

The response went on to further say that the fact that Sandra LaVergne was a permanent part time employee and that several sections of the contract dealing with the promotion of employees and further states that the grievance process with respect to the promotion is available only to full time permanent employees in accordance with the bargaining agreement. Further alleging that sections of article six and seven had been left out in the original complainant of this case and concluded that the unions position in not filing a grievance on behalf of Sandra LaVergne was based on contractual language and contractual language only.

Hearing in this matter was held at the Office of the PELRB Board in Concord, N.H. at 9:30 a.m. on November 29, 1990. On the day of the hearing Attorney Thomas J. Cooper representing Sandra LaVergne submitted to the Board an amendment to the original improper practice charge requesting the following relief:

That the Board order Sandra LaVergne reinstated in the position of Account Clerk II retroactive to September, 1990 and all back wages in direct and in direct benefits which have been due me as of that date. Finally request this Board to award me Attorney fees and costs incurred in connection with the activities allege in the improper practice.

The Board accepted without objection the amendment to the initial filing. Exhibit #1 submitted by the complainant gave a chronology of the case and several exhibits with respect to the bargained agreement setting forth the fact that she had been employed by the Hillsborough County Nursing home on a part time bases, apparently part time, full time Account Clerk II. A vacancy was posted for the position of Account Clerk II as a full time position to replace a retiring employee. Sandra LaVergne elected to transfer from part time to full time position. The job vacancy for full time Account Clerk II position was posted and Sandra LaVergne was selected

to transfer from part time to full time status to replace the retiring employee by the Administrator of the Hillsborough County Nursing Home. She was transferred from part time to full time employment in August. In September Hillsborough County Commissioners voted to award the job to a grieving union member employee effective 9/24/90 in accordance with the contract between the parties. Such action rescinded the action taken by the Hillsborough County Nursing Home Administrator in giving the job to Sandra LaVergne.

The month of September Sandra LaVergne wrote to the Commission inquiring what the proper procedures to follow in appealing this decision. The proper procedures were supplied by the Chairman of the Hillsborough County Board of Commissioners advising Ms. LaVergne to appeal their decision through the grievance procedure.

Sandra LaVergne requests Local 2715 to process her grievance and was told orally by union President Gary that they could not process her grievance and followed this by a written letter to the complainant. Sandra LaVergne served in the full time Account Clerk II position as appointed by Hillsborough County Nursing Home Administrator for a period of one month at which time she reverted to her permanent part time status. Further requests were made by the complainant to file grievances and to talk to a Mr. Beck for the purpose of processing the grievance. Again the union declined to process the grievance on behalf of Mrs. LaVergne alleging that to process a grievance would be in violation of the contractual language between the parties.

Various exhibits were offered concerning Sandra LaVergnes status and her correspondence between the Hillsborough County Commissioners and the Union. Also copies of correspondence between the union which stated its reason for not pursuing the grievance in accordance with the contract.

Testimony was taken from several witnesses. LaVergne's attorney Cooper reviewed the procedure that had been followed in this case. James Anderson Director of AFSCME testified that the postings had been made in accordance with the contract which states in paragraph 7.2 clearly that only full time employees can file a grievance. In accordance with that language the union in the first instance failed to process the grievance and so notified Sandra LaVergne.

The Business Office Manager for the Hillsborough County Nursing Home, Stanley Beck testified as his actions taken with respect to appointing Sandra LaVergne to the job from part time to full time as an Account Clerk II indicating that Sandra LaVergne was adequately qualified. He testified as to the re-posting of the job in the month of August and as to the action of the County Commissioner who in response to a grievance selected Jacqueline Schechter because of her seniority and also being a full time employee of the Hillsborough County Nursing Home.

Robert Curran testified as to Sandra LaVergnes employment

In closing Anderson for the union stated the unions willingness to rely on the written information submitted in response to the original filing by Sandra LaVergne.

Attorney Cooper for the complainant alleged that the posting was a new position and that his client had every right to apply for the position and had been denied her rights under the contractual agreement.

After considering all the testimony and written exhibits presented in this case the Board makes the following findings and substitutes these findings for the request for the parties.

FINDINGS OF FACT

1. Sandra LaVergne is a member of the bargaining unit represented by AFSCME

Council 93 Local 2715. The chronology submitted to the Board as referred to above was verbally testified to by several witnesses and the actions taken. The chronology of the case appears to be that stated above and was not disputed at the hearing by either party. The grievance involved in this case was filed in accordance with the contract language and was denied by the union in accordance with article 7 section .2 of the collective bargaining agreement entitled promotions and transfers.

2. Sandra LaVergne was notified of her being given the position of Account Clerk II on a full time bases from a part time bases by County Nursing Home Business Administrator in which she served for a period of one month and then was reverted back to her position as a part time Account Clerk II in the Business Office.

3. This reversion was made after a full time employee of the organization had grieved the situation and prevailed, Jacqueline Schechter was given the position. The County Commissioners did in fact uphold the grievance that was filed on behalf of Jacqueline Schechter and confirmed that the position would be given to Jacqueline Schechter and consequently Sandra LaVergne was removed from the full time job and reverted back to the part time position of Account Clerk II.

4. Contract language is specific and states, only full time employees have access to the grievance procedures quoted below.

"It is specifically agreed by the parties hereto that the Division has the sole right to decide upon and select the most qualified applicant for the open job. If two or more full time employees (emphasis added) covered by this Agreement are, in the Administrator's opinion, equally qualified, Division Seniority, as defined in Article VI, Section 1 (a) entitled 'Seniority' shall prevail. Qualifications...necessity."

"A full-time employee (emphasis added) who has applied for the open job in accordance with the provisions of this Article shall have the right to grieve the Administrator's decision in accordance with the provisions of Article XVI entitled 'Grievance Procedure', but only if the Administrator's decision was arbitrary, unjust or without any basis in fact."

5. Sandra LaVergne was advised of the reasons for non-pursuance of the grievance by the exclusive representative of the bargaining unit. Sandra LaVergne did pursue this matter before the County Commissioners who ruled that the person selected for the position was the one that had to be confirmed and that because of the contractual language Sandra LaVergne could not occupy the position.

ORDER OF THE BOARD

Based upon the above findings this Board finds no unfair labor practice charge against the union and further finds that the union adequately represented a bargaining unit member, Sandra LaVergne. The relief requested in the amendment to the original complaint is DENIED.

Signed this 25th day of April 1991.


EDWARD J. HASELTINE, Chairman

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