State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES ASSOCIATION OF NEW HAMPSHIRE, LOCAL 1984, S.E.I.U., AFL-CIO Complainant		CASE NO. S-0383:2 DECISION NO. 96-041
v.		
CITY OF LACONIA Respondent		

APPEARANCES

Representing State Employees Association:

Robert DeSchuiteneer

Representing City of Laconia:

Mark J. Bennett, Esq.

Also Appearing:

Ron Carrier, City of Laconia
Sherry Ryea, State Employees Association
Ward Freeman, State Employees Association

BACKGROUND

The State Employees Association of New Hampshire, Local 1984, S.E.I.U., AFL-CIO (Union) filed unfair labor practice (ULP) charges against the City of Laconia (City) on March 22, 1996 on behalf of a former employee, Sherry Ryea, alleging violations of RSA 273-A:5 I (h) relative to a breach of contract when the City failed to process Ryea's grievance. The City filed its answer on April 1, 1996. Thereafter, this matter was heard by the PELRB on May 16, 1996.

FINDINGS OF FACT

1. The City of Laconia is a "public employer" of personnel employed in its Welfare Department, and elsewhere, within the meaning of RSA 273-A:1 X.

2. The State Employees Association of New Hampshire, Local 1984, S.E.I.U., is the duly certified bargaining agent for Welfare Technicians and other employees employed by the City.

3. The Union and the City are parties to a collective bargaining agreement (CBA) for the period of July 1, 1995 to June 30, 1998. (Union Exhibit No. 9) Article VII of that document sets forth a grievance procedure which defines a grievance as "an alleged violation, misinterpretation or misapplication of any provision of this Contract raised by the employee or the City, claiming that an express written provision of this Agreement has been violated." Article XX of the CBA addresses "Disciplinary Actions." Article 20.2.1 says, "Disciplinary action is defined as a verbal or written warning, suspension or discharge and will be applied only for just cause." Similar language is found in the same numbered articles of the prior CBA effective for the period ending June 30, 1995. (Union Exhibit No. 5)

4. Article I of the current and prior CBA's contains the recognition clause. It says that, "[T]his agreement shall pertain to all permanent non-probationary full-time and part-time employees in the following positions. . . ." One of the listed positions is "welfare technician," a term which has been used interchangeably with "welfare case technician" in these proceedings. The language of the recognition clause does not speak further to the definition of a "probationary" or "non-probationary" employee. That is covered in Section 5 of the City's Classification and Compensation Plan, last amended July 1, 1989. This document is specifically directed to "persons not covered by union working agreements who are hired or promoted to fill permanent (regular) full

time or permanent part-time vacancies." They are required to complete successfully a six month probationary period. "Permanent full-time employees are those who have satisfactorily completed their probationary period and whose basic work week is 35 hours or more throughout the entire year." "Permanent part-time employees are employees who have satisfactorily completed their probationary period and whose basic or normal work week is at least 20 hours and less than 35 hours throughout the entire year." The probationary period is also defined as six (6) months in Section 9.15 of the Personnel Rules and Regulations. (Union Exhibit No. 7).

5. In the spring of 1995, the City advertised a position vacancy for a welfare case technician. (Union Exhibit No. 1). The successful applicant for that position was Sherry Ryea. She received a letter of appointment to a full-time position dated May 23, 1995 from Paul Weston, Director of Personnel and Purchasing. It stated that her starting date of employment was July 5, 1995 and that, upon completion of a six month probationary period, she would be eligible for a pay increase on January 5, 1996. (Union Exhibit No. 2)

6. Before she was due to start employment on July 5, 1995, Ryea received a call for Ron Carrier, the Welfare Director, on or before June 20, 1995, asking her if she could start early to help in the office because his secretary was out on sick leave. Ryea explained that she could not start her new full-time employment early due to the need to provide notice to her current employer. She did, however, offer to come in early, on a part-time basis, to assist in the office. She did so and was not told that this was temporary or special employment. She was paid at the same starting rate noted in her appointment letter, Union Exhibit No. 2. She received compensation for time worked in pay periods ending June 25, 1995 (11.5 hours on Union Exhibit No. 3) and June 30, 1995 (14 hours on Union Exhibit No. 4). She testified that she believed she had started her new job early and had done virtually the same work that she would otherwise have had to do on July 5, 1995, in order to familiarize herself with office procedures and

deal with client intake issues. Her work prior to July 5, 1995 did not involve creating files or making entitlement or benefits decisions.

7. Ron Carrier is the welfare director. He confirmed that he asked Ryea to start work early, before July 5, 1995, because his secretary was recovering from surgery. He took the position that Ryea was a part-time employee prior to July 5, 1995 and that her probationary term was from July 5, 1995 to January 5, 1996. His offer or request for her to start her job sooner was made after the letter of appointment was sent to Ryea on May 23, 1995 (Union Exhibit No. 2).

8. On December 29, 1995, Carrier wrote Ryea a letter terminating her employment pursuant to section 9.15 of the Personnel Rules and Regulations. (Union Exhibit No. 8) Ryea instituted a grievance for this termination. On January 5, 1996, DeSchuiteneer grieved Ryea's termination by letter to Carrier. On January 10, 1996 Carrier responded by letter to DeSchuiteneer saying that Ryea was a probationary employee, not covered by the CBA and that a meeting was not required. On January 11, 1996, DeSchuiteneer appealed to City Manager Daniel McKeever by letter, citing CBA Article 7.8.3. On January 17, 1996, McKeever wrote back to DeSchuiteneer saying that Ryea began full-time employment on July 5, 1995, was terminated on December 29, 1995, and that she had not attained non-probationary status at the time of her termination. He said this made her ineligible to use the grievance procedure of the CBA. On January 22, 1996, by letter from DeSchuiteneer to McKeever, the Union appealed under CBA Section 7.8.4 On January 30, 1996, McKeever wrote to DeSchuiteneer, citing an employment date of July 5, 1995, referencing the recognition clause of the CBA, Section 1.1, and the grievance language of Section 7.9.1, and saying that the City did not believe it had an obligation to respond to the Union's request for arbitration. The pending ULP was filed March 22, 1996.

DECISION AND ORDER

This is a case in which the Union has sought to compel the City to process a grievance to arbitration. The City has defended by saying that the would-be grievant never completed her probationary period and, accordingly, cannot avail herself of the grievance and arbitration provisions of the contract because she does not fall under the terms of the Recognition Clause.

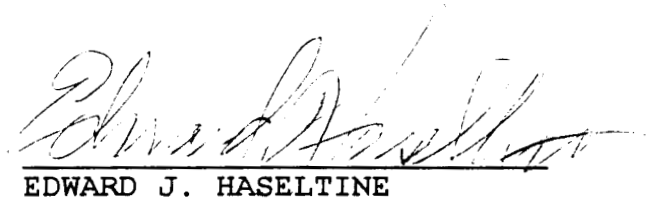
Our examination of the chronology of events in this case leads us to conclude that Ryea was hired as of and not later than June 20, 1995. This determination is supported by six factors. First, Ryea's letter of appointment was dated May 23, 1995 for a starting date of July 5, 1995. Second, it was not until June of 1995 that Carrier asked Ryea to "start early," thus modifying, albeit orally, the letter of May 23, 1995. Third, Carrier's intentions were for Ryea to start regular, full-time employment early. It was only because of Ryea's obligation to her prior employer that she did not do so and agreed to come in on a part-time basis instead. This was acceptable to her employer, the City. Fourth, Ryea was not offered or told that her "starting early" employment was for anything less than the job for which she had been hired, a welfare case technician. Fifth, as supported by pay stubs, Ryea was paid as a welfare case technician, not a lower position, for the services she rendered to the City prior to July 5, 1995. Sixth and finally, Ryea performed the same type of familiarization and assisting duties in June of 1995 as she would have been required to perform in July of 1995 had she not started her employment until July 5, 1995. There is no evidence that she was a "temporary" employee, excluded from coverage by RSA 273-A:1 IX, given the content of what she did, what she was (or was not) told, and how she was paid.

We find the foregoing factors to be too compelling to permit the City to reject the processing of Ryea's grievance because she had not completed her six month probationary period prior to December 29, 1995, the date when the City gave her the termination letter. There is no history of disciplinary proceedings, counseling or dissatisfaction with Ryea's work performance between June 20, 1995 and December 29, 1995. While we do not intend to speak to the merits of the pending grievance in this decision, we do find the City's refusal to process the case to arbitration to have been a breach of contract and, thus, a ULP under RSA 273-A:5 I (h). The City's Motion for a Directed

Verdict is DENIED. The parties are directed to proceed to arbitration of the pending grievance, over a matter clearly set forth as the parties' "benefit of the bargain" in Article XX of the CBA, forthwith.

So ordered.

Signed this 12th day of June, 1996.



EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding. Members E. Vincent Hall and William Kidder present and voting.