State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF RYE Complainant v. TEAMSTERS LOCAL 633 OF NEW HAMPSHIRE for RYE FIRE and POLICE ASSOCIATION Respondent	CASE NO. M-0664:4 DECISION NO. 97-001

APPEARANCES

Representing Town of Rye:

Michael Donovan, Esq., Counsel

Representing Teamsters Local 633 of N.H. for Rye Fire and Police Association:

Gabriel Dumont, Esq., Counsel

Also appearing:

Edward H. Herlihy, Town of Rye
Tom Noonan, Teamsters Local 633

BACKGROUND

The Town of Rye (Town) filed unfair labor practice (ULP) charges against Teamsters Local 633 of New Hampshire on behalf of the Rye Fire and Police Association (Union) on October 11, 1996 alleging violations of RSA 273-A:5 II (a), (b), (f) and (g) resulting from its intervention in a grievance which had been processed and resolved and from its sanctioning the filing of a wage claim with the New Hampshire Department of Labor on that resolved grievance. The Union filed its answer on October 28, 1996. This matter was then set for hearing by the PELRB on December 12, 1996. Between the date of the Union's answer and

the date of the hearing, the parties met and agreed to convert the pending ULP complaint to a declaratory judgment proceeding. The PELRB granted that motion to convert these proceedings when the hearing in this matter convened on December 10, 1996.

FINDINGS OF FACT

1. The Town of Rye is a "public employer" of personnel employed in its police and fire departments within the meaning of RSA 273-A:1 X.

2. The Rye Fire and Police Association, Teamsters Local 633 of New Hampshire is the duly certified bargaining agent for all permanent and full-time members of the Rye Fire and Police Departments excluding the Fire and Police Chiefs and the Assistant Fire Chief.

3. The Town and the Union are parties to a collective bargaining agreement (CBA) for the period January 1, 1996 through December 31, 1998. Article V of that agreement is entitled "Arbitration." A grievance is defined as "a complaint by an employee that the Town has interpreted and applied the Agreement in violation of a specific provision thereof." The grievance procedure, pre-arbitration, consist of three steps: (1) oral to the supervisor, (2) written to the respective chief and (3) written to the selectmen or their designee. If the grievance is not resolved in steps one through three, inclusive, "to the satisfaction of the aggrieved employer, the Association may...submit the grievance to Arbitration." Further, "in the event the Association elects to proceed to arbitration," then the Union and the Town are charged with attempting to agree on a mutually acceptable arbitrator. The decision of the arbitrator, if within the scope of authority granted in the arbitration article is "final and binding upon the Association and the Town and the aggrieved employee who initiated the Grievance." Article VI, Sec 6.

4. Section XII of the CBA identifies ten (10) holidays: New Year's Day, Washington's Birth-

day, Civil Rights Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day. It further provides that "an employee who works a holiday shall be paid time and one-half (1 1/2) under this article above their normal compensation for hours actually worked on the holiday." The holiday "shall be defined as the 24 hour period on the day the Town observes the holiday. All hours worked within that time period will be compensated [at time and a half.]"

5. On March 25, 1996, bargaining unit member Kenneth Moynahan submitted a step 2 written grievance to the acting fire chief, Bruce Walker, complaining that a pay check he received on March 21, 1996 was six (6) hours or $144.48 ($337.12 - $192.64) short. He claimed, "My Civil Rights floating holiday was observed on St. Patrick's Day...I submitted a signed time sheet for this holiday pay." That grievance was apparently denied because Moynahan then submitted a step 3 grievance to the selectmen on April 6, 1996. He again claimed, "AS per POLICY DIRECTIVE CIVIL RIGHTS DAY is a FLOATING HOLIDAY. I chose to use ST. PATRICK'S DAY as my FLOATING HOLIDAY. I was paid $192.64 for 8 hours on this date. I am owed 6 hours which amounts to $144.48." [capitalization in original]

6. On April 19, 1996, the Board of Selectmen wrote Moynahan denying his grievance. Thereafter, there is no evidence that the Association either submitted the grievance to arbitration, along with written notice of that intention under CBA Article VI, Section 1 or elected to proceed to arbitration under Article VI, Section 2. Complainant asserts in its pleadings that Moynahan wanted to arbitrate the grievance but that a Local 633 business agent told him he would have to pay the cost of arbitration himself because he was not paying union dues. The Respondent denied that allegation and said that the "Local 633 Business Agent advised employee Moynahan that the Agent did not

believe that the employee's grievance had merit and that if the employee wished to proceed to arbitration under the collective bargaining agreement he would have to make a request in writing to that effect and the Business Agent would present the request to the Union's Executive Board's consideration. No such request was made by employee Moynahan."

7. On June 13, 1996, Moynahan filed a wage claim with the New Hampshire Department of Labor for $144.48 for having worked 14 hours on St. Patrick's Day, for having used March 21, 1996 as a floating holiday, and for having received only $192.64 which was not inclusive of his $144.48 claim. He also filed a second claim, same document, for an alleged improper handling and calculation of his Memorial Day holiday pay.

8. On October 11, 1996, the Town filed ULP charges against the Union claiming that it had violated: (1) RSA 273-A:5 II (a) by interfering with and coercing a public employee's right to grieve thereby causing the Town to defend a wage claim; (2) RSA 273-A:5 II (b) by interfering with and coercing the Selectmen's settlement of grievances by "tacitly sanctioning the...NHDOL wage claim after the employee had exhausted the Level 3 grievance process..." and "by refusing to take an employees [sic] grievance forward...and then tacitly sanctioning the filing of a wage claim;" (3) RSA 273-A:5 II (f), by breaching the CBA by "sanctioning" a covered employee's filing a NHDOL wage claim over a matter which had been resolved by the grievance process; and (4) RSA 273-A:5 II (g) by violating RSA 273-A:4 relating to workable grievance procedures when it "sanctioned" the filing of a NHDOL wage claim on a dispute "which had reached a resolution through the grievance process." These charges were later converted to a declaratory judgment action.

DECISION AND ORDER

We find the petitioned-for declaratory judgment action to have been mooted by the conduct of the parties. Moynahan filed

his Step 2 grievance on March 25, 1996 and his Step 3 grievance on April 6, 1996. The Step 3 grievance prompted a written response on April 19, 1996 denying the grievance. Article V, Section 7 of the CBA provides that the meeting prompting the written response must be conducted within 5 working days of submission to the Board level and that the written response must be submitted within three working days of that meeting, i.e., the Board's April 19, 1996 letter to Moynahan. On April 29, 1996, Moynahan wrote to the Selectmen acknowledging receipt of their April 19, 1996 (a Friday) letter on April 23, 1996 (a Tuesday) and seeking "to proceed to Article VI of the contract which deals with Arbitration." He also offered, at that time, to meet with the selectmen or their designee to reach a settlement prior to arbitration. This is the last timely indication provided to us that Moynahan wanted to proceed to arbitration.

Article VI, Section 1 of the CBA provides that, "if the grievance has not been resolved to the satisfaction of the aggrieved employee, the Association may give written notice to the Town, within then (10) working days of the end date of the meeting [with the Selectmen] referred to in Level 3." We are presented with no evidence that such notice was ever given by the Association or that there was any agreement between the parties to waive or extend the time for giving that notice. Thus, we conclude that the Association never gave the requisite notice to proceed to arbitration within the time limits of Article VI of the CBA.

According to the CBA, the notice would have to have been given sometime between April 30th and May 3rd, 1996, each date being ten working days after April 16, 1996 and April 19, 1996, respectively. We identify these meeting dates because the selectmen's Level 3 response letter can issue not sooner than the date the meeting was held and not later than 3 days after it was held (Article V, Section 7, para. 3). This did not occur.

The Town's offer of proof suggests that Moynahan, a business agent from Local 633 and a representative of the selectmen met "in early June, 1996," presumably in response to Moynahan's offer to participate in such a meeting as conveyed in his letter of April 29, 1996. This meeting and its purposes are outside the contract and, without a waiver or extension of time limits for notice, contributes nothing to the disposition of this matter. The prescribed and agreed-to time limits were not met.

By failing to file notice of its intent to proceed to arbitration within the prescribed time limits set forth in Article VI of the contract, the Association, one of the two

parties to the CBA, acquiesced in the disposition announced by the selectmen in their letter to Moynahan on April 19, 1996. That is where the grievance procedure stops when the required notice to proceed to arbitration has not been given. Thus, this is cause for us to dismiss the pending petition for declaratory judgment. There is no breach of contract and, thus, no RSA 273-A:5 II (f) violation.

As for the Town's particularized charges, referenced in Finding No. 8, we believe the mooting of all actions after the Association's failure to give notice under CBA Article VI also voids these particularized charges because the contract grievance procedures had been completed by that time, i.e., ten working days after April 19, 1996. If not, the quantum of proof required to show either "sanctioning" or "tacit sanctioning" of Moynahan's filing a wage claim was not met, thus causing us to dismiss the RSA 273-A:5 II (b), (f) and (g) allegations. See City of Manchester v. Michael Kilrain et al., PELRB Decision No. 93-124 (September 16, 1993) where a similar petition was dismissed when there was no evidence that the certified bargaining agent was a party to or was encouraging an individual's bringing a wage complaint to the NHDOL after final adjudication under the arbitration provisions of the CBA. The same principle applies here when Moynahan and/or the Association did not pursue his grievance. The grievance process stopped and the Town's disposition became final. Likewise, the RSA 273-A:5 II (a) charge is dismissed on the basis of an inadequate quantum of proof, again because the Town did not establish the Association's involvement in causing Moynahan to file his wage claim.

Based on the foregoing, the pending petition for declaratory judgment is DISMISSED, and, because of its being dismissed and its being a declaratory judgment action no remedies are discussed or directed.

So ordered.

Signed this 6th day of January, 1997.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members E. Vincent Hall and William F. Kidder present and voting.