



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PIERRE PLANCHET	:	
	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. S-0402
	:	
STATE EMPLOYEES ASSOCIATION	:	DECISION NO. 1998-074
OF NEW HAMPSHIRE, SEIU, LOCAL 1984	:	
	:	
Respondent	:	

APPEARANCES

Representing Pierre Planchet:

Pierre Planchet, *pro se*

Representing State Employees Association:

Thomas Hardiman, Director of Field Services

Also appearing:

Wayne Brock

Denis Parker, State Employees Association

BACKGROUND

Pierre Planchet, acting and appearing *pro se*, filed unfair labor practice (ULP) charges against the State Employees Association of New Hampshire, S.E.I.U. Local 1984 (Union) on July 10, 1998 alleging violations of RSA 273-A:5 II (d), (f) and (g) for breach of contract and failure to comply with Chapter/RSA 273-A as the result of exceeding time limits in certain grievance arbitration proceedings. The Union filed its answer and a

request that the ULP be dismissed on July 23, 1998, after which this matter was heard by the PELRB on August 27, 1998.

FINDINGS OF FACT

1. The complainant, Pierre Planchet, is a corrections officer employed by the State of New Hampshire and, as such, is a member of the bargaining unit which is represented by the State Employees Association of New Hampshire, S.E.I.U., Local 1984. As the duly certified bargaining agent, the State Employees Association has all the rights and responsibilities enumerated at RSA 273-A:11.

2. The State Employees Association of New Hampshire, S.E.I.U. Local 1984 and the State of New Hampshire are parties to a collective bargaining agreement (CBA) for the period July 1, 1997 through June 30, 1999 which covers the complainant herein as well as other employees employed by the State of New Hampshire, Department of Corrections. Article XIV of the CBA is entitled "Grievance Procedure" and, at the sections designated, provides:

14.1.4. Time Limits: All time limits set herein may by mutual agreement between the grievant and the Employer be extended.

* * * *

14.5.5 Panel Conditions: Arbitrators Appointed to the panel shall agree to the following conditions:

* * * *

c. The arbitrator will provide a hearing date within sixty (60) days of a request for hearing. If unable to do so, the Arbitrator's name will be placed on the bottom of the list and the next member will be appointed.

* * * *

- 14.6.2 - Consistency with Agreement: Any resolution of a grievance shall not be inconsistent with the terms of this Agreement.
- 14.6.3 - Missed Time Limits: Failure on the part of the supervisor or Agency Head to comply with the time limit requirement of this Article shall elevate a grievance to the next step unless the Parties have agreed to extend the time limit requirement.

3. On or about December 10, 1997, SEA steward Donald White filed a Step III grievance on behalf of Planchet against the Department of Corrections. There is no record that the State responded to this grievance within the ten (10) days referenced in Article 14.4.3. Subsequently, in a letter addressing other grievances from Planchet to Thomas Hardiman, Director of Field Services for the Union, dated January 6, 1998, Planchet said, "I have informed you very clearly during our previous telephone conversation... that I do not wish to provide an extension of time to resolve any of these grievances and I consider that disregarding my clearly stated wishes as the State Employees' Association['s] failure to provide me with effective representation."
4. On January 14, 1998, Hardiman wrote Planchet, saying he had met with State Negotiator Manning and Cheryl Corson over the arbitration requests. Hardiman said:

I met with Tom Manning and Cheryl Corson over the arbitration requests. Both felt that the SERT issue was worth resolving without the need of an arbitrator. I spoke to Mr. Gerry and he feels that the issues you raised can be complied with by the agency and he is going to request that the file be reviewed and the rules be met. You will have the same equipment and training as the other members.

This was followed by a letter from Richard Gerry to Hardiman on January 30, 1998, resolving Special Emergency Response Team (SERT) issues by: (1) adhering to PPD 5.93 on fitness assessments, (2) providing

protective equipment per PPD 5.93 IV, 7, and (3) providing Planchet with 40 hours of SERT in-service training.

5. On February 2, 1998, Cheryl Corson, SEA Board of Directors, wrote Planchet denying arbitration requests for lateral transfers and vacancy issues, and saying that she would ask for arbitration on the equipment and training issues (shown in Finding No. 3) if there was no management response by February 6, 1998. Planchet related his dissatisfaction with Corson's decision by writing a letter to SEA Executive Director Denis Parker on February 5, 1998, seeking to appeal Corson's decision. By February 12, 1998, Parker had referred the matter to Claire Gervais, chair of the SEA Grievance Committee. Gervais denied pursuing the SERT training grievance further in a letter to Planchet dated February 18, 1998.
6. Planchet persisted in his dissatisfaction with the result that Gervais again wrote him on March 26, 1998 saying that she believed the Grievance Committee had disposed of his problem since it had voted to grant his request seeking arbitration, without further reference to the issues involved. Thereafter Planchet made a presentation to the SEA Board of Directors on April 9, 1998, after which that board voted to accept the Grievance Committee's recommendation to pursue his issue (not further identified) to arbitration. SEA President John Armol conveyed this to Planchet by letter of April 13, 1998. According to a letter attached to the ULP complaint, an arbitration was scheduled for and held on May 11, 1998 in Concord, N.H. Under the provisions of Article 14.5.5 (d) of the CBA arbitration decisions are due within thirty (30) days of the close of the hearing.
7. Thomas Hardiman, testifying for the Union, said that extensions were not granted in the first three steps of the grievance procedure (Article 14.2 through Article 14.4.3 inclusive), consistent with the Planchet's request. Thereafter, the grievance becomes the "property" of the Union which is responsible, in conjunction with the State, for arbitrators selection and scheduling the hearing(s).

DECISION AND ORDER

We have examined the chronology of events in this case, as reflected in our Findings of Fact. Notwithstanding that every time limit contemplated in the CBA was not met, we find substantial compliance with the purpose, intent and time limits set forth therein. We reach this conclusion based on several circumstances. First, it is compelling that once arbitration was approved, as conveyed by Amrol's letter of April 13, 1998, the actual hearing occurred less than thirty days later. The CBA contemplates up to sixty (60) days for that to occur (Article 14.5.5.c). Second, the flow of correspondence reported in our findings was efficiently and timely accomplished. There is no evidence of "stonewalling" or of intentional delays in responding to the concerns or appeals of Planchet. Third and finally, Planchet suffered no loss from the sequence of events since he first asserted his grievance(s). Moreover, since the grievance process is controlled by the CBA, according to the terms set by the State and the Union, this complainant, in order to prevail, must have shown inaction and culpability on the part of the Union. He has not done so. In fact, he was accorded his rights under the CBA, his appeal rights internal to the State Employees Association, and, ultimately, all the arbitration hearings he sought. There is no cause to grant any relief in this case.

The ULP is DISMISSED.

So ordered.

Signed this 11th day of September, 1998.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.