



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Brotherhood of Teamsters, Local 633

v.

Administrative Office of the Courts

Case No. G-0120-1
Decision No. 2010-086

Appearances:

Jeffrey Padellaro, Business Agent, International Brotherhood of Teamsters, Local 633, Manchester, New Hampshire for the Complainant.

Howard Zibel, Esq., General Counsel, Concord, New Hampshire for the Respondent.

Background:

International Brotherhood of Teamsters, Local 633 (Union) filed an unfair labor practice complaint against the Administrative Office of the Courts (AOC). The Union complains that the AOC refused to meet with the Union to discuss the reasons for the termination of a bargaining unit employee and failed to provide requested documentation to support the discharge, all in violation of RSA 273-A:5. The Union requests that the PELRB reinstate the employee and provide additional relief as appropriate.

The AOC denies the charge and contends that it did provide information to the Union about the involved employee and denies that it refused to meet with the Union to discuss the situation. The AOC moved to dismiss, arguing that Union's complaint is deficient because it

fails to meet the requirements of Pub 201.02 (b)(4), the factual allegations are otherwise insufficient to establish a violation of any provision of RSA 273-A:5, I, and the PELRB otherwise lacks jurisdiction.

A hearing was held on January 28, 2010 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to offer documentary evidence, and to examine and cross-examine witnesses. The parties agreed to submit the case on stipulated facts and exhibits as well as offers of proof, and the record is closed.

Findings of Fact

1. International Brotherhood of Teamsters, Local 633 (“Union”) is the certified representative for certain Court Security Officers employed by the Administrative Office of the Courts (“AOC”).

2. The AOC is a public employer within the meaning of RSA 273-A:I:X.

3. The Union was certified as the exclusive representative of a bargaining unit consisting of certain court security officers on May 4, 2009.

4. Gregory Carlson was employed as a per diem court security officer for the AOC and was a member of the bargaining unit. At the end of 2008 the AOC notified Mr. Carlson that it was investigating whether he had violated the Anti-Discrimination Policy. An investigator interviewed Mr. Carlson about the matter in January, 2009, and the Director of the AOC interviewed Mr. Carlson toward the end of April, 2009.

5. He was discharged from employment on June 26, 2009, following an investigation, for violation of the Judicial Branch Anti-Discrimination Policy. The Policy is dated April 30, 2007. See Joint Exhibit 5.

6. By letter dated June 30, 2009, the Union requested information, including relevant documents, from the AOC regarding the termination of Mr. Carlson.

7. The AOC responded on July 8, 2009, indicating that Mr. Carlson was dismissed for violating the Judicial Branch Anti-Discrimination Policy and that that policy makes the investigator's report and other investigatory documents confidential.

8. The union and public employer conducted their first collective bargaining session on July 10, 2009.

9. A tentative collective bargaining agreement was reached on September 3, 2009 and was ratified on October 4, 2009.

10. The disciplinary provisions of the collective bargaining agreement, including those governing discharge, are not retroactive.

Decision and Order

Decision Summary:

The Union's complaint is dismissed. There is insufficient evidence to establish a violation of any particular provision of RSA 273-A:5, I in general or the status quo doctrine in particular.

Jurisdiction:

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. *See* RSA 273-A:6, I.

Discussion:

The board first addresses whether the AOC's conduct constituted a refusal to recognize and deal with the Union in its capacity as the duly certified exclusive representative of the bargaining unit in violation of any provisions of RSA 273-A:5, I. The board finds that the

AOC's failure to participate in a requested meeting or to provide the requested documents is insufficient to establish that the AOC improperly refused to recognize, interact, or otherwise deal with the Union. The AOC responded to the Union's June 30, 2009 letter with letters dated July 2, 2009 and July 8, 2009. These letters represent prompt responses which both recognized the Union's status as exclusive representative and explained the basis for Mr. Carlson's discharge. As to the remainder of the Union's claims the board concludes that the AOC's actions, including the process it afforded to Mr. Carlson, its refusal to provide the Union with the requested documentation and otherwise engage with the Union about the basis for the discharge, as well as the merits of the termination decision, were not contrary to the AOC's obligations under the status quo doctrine and/or any particular sub-section of RSA 273-A:5, I.

During the relevant time period the parties were operating under the status quo doctrine – a circumstance which precludes a public employer from making unilateral changes in the terms and conditions of employment:

A public employer's unilateral change in a term or condition of employment (whether during negotiations for an initial CBA or during a status quo period following expiration of a CBA) is tantamount to "a refusal to negotiate that term and destroys the level playing field necessary for productive and fair labor negotiations.

Appeal of Nashua Board of Education, 141 N.H. 768, 772 (1997)(citations omitted). The PELRB has previously found that a public employer is required to maintain the status quo as of the date a certification petition is filed. *AFSCME, Local 1348 for Hanover Town Employees v. Town of Hanover*, PELRB Decision No. 95-47 (July 21, 1995).

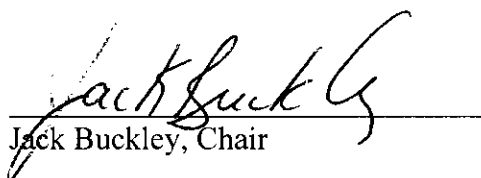
In this case the board finds that the AOC satisfied its obligations under the status quo doctrine and did not unilaterally change existing terms and conditions of employment that were mandatory subjects of bargaining. Instead, during the applicable time period, the AOC continued to follow and implement existing procedures and policies when it conducted an

investigation, administered the existing AOC Anti-Discrimination policy, and discharged Mr. Carlson. The Anti-Discrimination policy at issue dates to April 30, 2007 and was in place at the time the Union filed its certification petition on July 18, 2008 as reflected in PELRB Decision No. 2009-048. It is a policy Mr. Carlson was subject to as a condition of his employment. Additionally, the parties stipulated that the disciplinary and discharge provisions of the CBA finalized in October 2009, some three months after Mr. Carlson's discharge, are not retroactive. Accordingly, the AOC did not violate any provision of RSA 273-A:5, I when it investigated and ultimately discharged Mr. Carlson according to the Anti-Discrimination policy.

Since under the applicable law the circumstances of Mr. Carlson's discharge are not otherwise subject to review by this board the Union's claims for relief are denied and the complaint is dismissed.

So ordered.

April 29, 2010.



Jack Buckley, Chair

By unanimous vote. Chair Jack Buckley presiding with Board Members Kevin E. Cash and Carol M. Granfield also voting.

Distribution:
Jeffrey Padellaro
Howard Zibel, Esq.