



NH Supreme Court affirmed this decision on October 4, 1996, NH Supreme Court Case No. 95-254.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, LOCAL 3657

Complainant

v.

HILLSBOROUGH COUNTY
DEPARTMENT OF CORRECTIONS

Respondent

CASE NO. A-0428:82

DECISION NO. 94-107

APPEARANCES

Representing AFSCME, Local 3657:

James C. Anderson, Staff Representative

Representing Hillsborough County:

Carolyn Kirby, Esq.

Also appearing:

David Dionne, HCDOC
Marc Cusson, HCDOC
Jim O'Mara, HCDOC
Richard Roulx, Hillsboro County
Jim Vacca, AFSCME Local 3657

BACKGROUND

AFSCME Local 3657 filed an unfair labor practice charge on August 2, 1994 complaining of violations of RSA 273-A:5 (a), (c), (g), (h) and (i) relative to the failure of Hillsborough County Department of Corrections to implement the decision of the arbitrator following binding arbitration. The County's answer was filed on August 16, 1994. The matter was heard before the undersigned hearing officer on October 11, 1994.

FINDINGS OF FACT

1. The Hillsborough County Department of Corrections (County) is a "public employer" within the meaning of

RSA 273-A:1 X.

2. AFSCME Local 3657 (Union) is the duly certified bargaining agent for corrections officers and certain other personnel within the Hillsborough County Department of Corrections.
3. The Union and the County are parties to a collective bargaining agreement for the period July 1, 1988 through June 30, 1990 which continues from year to year thereafter. A copy of that agreement was filed with the PELRB on January 24, 1989. Article 15, section 2 calls for final and binding arbitration. Article 15, section 3 limits the arbitrator as follows:

The arbitrator shall not have the power to add to, ignore or modify any of the terms or conditions of this agreement, . . . His decision shall not go beyond what is necessary for the interpretation and application of expressed provisions of this agreement. The arbitrator shall not substitute his judgment for that of the parties in the exercise of rights granted or retained by this agreement.
4. A progressive disciplinary procedure (PDP) was taken into evidence. It was acknowledged by both parties and in pertinent part reads:

Section 9. Upon conviction of a Class I (2nd offense) or Class Two (1st offense) violation the Director may, at his sole discretion, order a reduction of one or more ranks if the violation(s) involve failure to properly supervise subordinate employees or failure to provide proper leadership to subordinates.
5. On June 30, 1993, then Sergeant James Vacca was involved in an incident which resulted in discipline and a reduction in rank as well as a suspension. The discipline was appealed through the various steps through the CBA grievance procedure.
6. Arbitrator Gary Altman was appointed and the parties presented their cases at hearing on January 21, March 22 and 25, 1994. Arbitrator Altman rendered his decision on May 30, 1994. He concluded that the five day suspension was for just cause but the

permanent demotion of the grievant was not for just cause. He ordered the grievant reinstated to a sergeant's position with retroactive adjustment in pay beginning on the day after the conclusion of the five day suspension.

7. The County filed a request for reconsideration dated June 7, 1994. By letter of June 24, 1994, Gary D. Altman denied the County's request.

DECISION AND ORDER

The County takes the position that the PDP is a part of the contract and that the arbitrator exceeded his authority when he ordered James Vacca reinstated to the rank of sergeant. The County refers to Article 15 section 3 of the grievance procedure which prevents the arbitrator from substituting his judgment for that of the parties or exercising rights retained by the parties to this agreement or ignoring or modifying a term of this agreement. The County argues that Arbitrator Altman made a decision contrary to the above referenced section of the CBA by ignoring Section 9 of the PDP which gives the Director the sole discretion to reduce the grievant in rank based on the Director's findings.

RSA 542 provides for binding arbitration by public employers and public employees when the CBA between the parties so specifies. The parties may agree or contract to limit the arbitrator and the specific limitations will be honored. The contract submitted to the PELRB in accordance with RSA 273-A:16 I does not contain the PDP and makes no reference to the PDP. The PDP will not be considered a part of the negotiated CBA so giving reason to go behind the arbitrator's decision.

The arbitration award stands and must be implemented forthwith.

So ordered.

Signed this 15th day of November, 1994.



GAIL C. MORRISON, Hearing Officer