



NH Supreme Court affirmed this decision on August 12, 1996, Slip Opinion No. 95-019, 141 NH 291 (1996).

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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TOWN OF LONDONDERRY	:
	:
Complainant	:
	:
v.	:
	:
AFSCME, LOCAL 3657	:
ON BEHALF OF POLICE	:
DEPARTMENT EMPLOYEES	:
	:
Respondent	:
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CASE NO. A-0563:2
DECISION NO. 94-93

APPEARANCES

Representing Town of Londonderry:

Mark Broth, Esq.

Representing AFSCME:

James C. Anderson, Staff Representative

Also appearing:

Chris Goddu, Town of Londonderry
Joe Maccarone, AFSCME Local 3657
Richard M. Plante, Town of Londonderry

BACKGROUND

The Town of Londonderry (Town) filed unfair labor practice (ULP) charges alleging violations of RSA 273-A:5 II (f) against Local 3657 of the American Federation of State, County and Municipal Employees (Union) on February 8, 1994. The Union filed its answer on February 15, 1994. After continuances sought and granted for the dates of April 7, 1994, May 26, 1994 and July 19, 1994, this matter was heard by the PELRB on September 13, 1994.

FINDINGS OF FACT

1. The Town of Londonderry is a "public employer" within the meaning of RSA 273-A:1 X.

2. The American Federation of State County and Municipal Employees, Local 3657, is the certified bargaining agent for police officers and certain other permanent employees of the town's police department.
3. The parties executed a collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1995. Article VVI, Section 3 of that agreement permits union officers to process grievances. Article XXVII of the CBA defines "grievance" as "an alleged violation of any of the provisions of this agreement."
4. On June 24, 1993, the Union filed a grievance alleging violations of CBA Article VII, Section 4 and Article IX because the Town was giving the Rockingham County Sheriff's Department "the task of policing the airport in Londonderry." Article VII, Section 4 (B) provides:

Without limiting the forgoing, the Town agrees that it will not aid, promote, or finance another labor group or organization purporting to engage in collective bargaining or make any agreement with any such group, organization, or individual which would violate any rights of the Union under this Agreement or the Law.

Article IX provides, in pertinent part, that "the Town agrees not to engage in any lockout."
5. As the result of court proceedings initiated by the Town of Londonderry against the City of Manchester and the Manchester Airport Authority to restrain them from "proceeding with the bid process to award a contract for certain police/security services at the Manchester Airport" because the new terminal building is located in the town of Londonderry, on July 22, 1993, Superior Court Justice Mangones denied the petition for a temporary restraining order. On August 26, 1993, the superior court granted the Town's Motion for a Voluntary Nonsuit Without Prejudice in this matter.
6. Notwithstanding its failure to obtain injunctive relief, the Town submitted a bid to provide the police and security services referenced in Finding No. 5. It was unsuccessful in that process; the bid was awarded to the Rockingham County Sheriff's Department.
7. On August 16, 1993, the Town's Board of Selectmen denied

the Union's grievance detailed at Finding No. 4. The Union then proceeded to file a demand for arbitration with the American Arbitration Association on August 30, 1993 in accordance with the procedure outlined at Article XXVII, Section 2, Step 4 of the CBA.

8. This case presents an issue of substantive arbitrability. The parties have agreed, by their pleadings, that the PELRB has primary jurisdiction over questions of substantive arbitrability of disputes between parties to a CBA.

DECISION AND ORDER

There are two aspects to resolving questions of arbitrability, namely, issues of procedural arbitrability or issues of substantive arbitrability. This case is one of the latter, not the former.

Substantive arbitrability involves the determination of whether the complained of conduct falls under the definition of a grievance as found in the contract. If it does, then the matter is substantively arbitrable. If it does not, then the matter is not arbitrable. In this case we must find that the subject matter of the grievance is not substantively arbitrable.

Article XXVII of the CBA defines a grievance. Finding No. 3, above. The CBA does not provide that contracting out of police and security services at Manchester Airport is a breach of its terms yet the basis of the Union's grievance is that the Rockingham County Sheriff's Department "is being given the task of policing the airport in Londonderry." The Rockingham County Sheriff's Department is neither a party to the CBA nor a "labor organization" within the meaning of Article VII, Section 4 (B). The parties to the CBA have stipulated that the pending grievance involves only Articles XII and IX of their agreement. We find no proscription in those articles which prohibits the conduct complained of by the Union.

In the broader sense, so far as the grievance complains, or attempts to complain, about the contracting of services by the City of Manchester or the Manchester Airport Authority, neither of those entities is a party to the CBA. Thus, they would be exempt from any authority conferred on the arbitrator by the CBA. Likewise, the CBA does not contemplate that the Town may be compelled by the Union, through the use of the grievance procedure, to initiate or maintain litigation to enforce rights without a substantive basis in the CBA. Finally, as protected by RSA 273-A:1 XI, the Town maintains the "managerial policy" as to the direction and number of its personnel, or, in the words of the Town (Memorandum, page 5), "through ownership of the airport terminal, Manchester and the Manchester Airport Authority...are entitled to some [police and security] service but not permanent police presence on MMA

property."

By insisting on processing this case to arbitration through the grievance provisions of the CBA, the Union violated that agreement and, thus, committed an unfair labor practice under RSA 273-A:5 II (f). It is directed to cease and desist from the further processing of this grievance forthwith.

So ordered.

Signed this 6th day of October, 1994.



EDWARD J. HASELTINE
Chairman

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