



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 298 AFL-CIO (Normand Douville case)	:	
	:	
Complainant	:	CASE NO. A-0479:2
	:	
v.	:	
	:	
CITY OF MANCHESTER	:	DECISION NO. 83-62
	:	
Respondent	:	
	:	

APPEARANCES

Representing AFSCME, Local 298

James J. Barry, Jr., Esq., Counsel
Normand Douville, Complainant

Representing the City of Manchester

Pauline Guay, Esq., Counsel
Wilbur L. Jenkins, Personnel Director

Also Present

Raymond Carter, Chief Sanitary Engineer
Jay Dorval, City
George Berlandi, City

BACKGROUND

In a complaint filed April 18, 1983, Local 298, AFSCME (Union), Manchester Municipal Employees, charged the City of Manchester (City), with a violation of RSA 273-A:5 having committed an unfair labor practice contrary to 273-A:5, I (a) (c) (g) (h) (l) in that the City did unfairly reinstate Mr. Normand Douville by denying him some seniority and failing to promote him as required.

Mr. Douville had been fired on July 22, 1982, from his position with the Wastewater Treatment Facility and had grieved this. An arbitration action went forward in January 1983 and the arbitrator, on February 11, 1983, found for Mr. Douville and ordered him "reinstated with full seniority" and a "one month suspension" and ordered that Douville "be made whole". (Arbitrator's decision).

The Union further contends that Mr. Douville returned to work on March 14, 1982 and in the meantime was informed that he was still on probation (as foreman) and would "be expected to pass the Grade IV exam" in the Spring. Since Mr. Douville was promoted to foreman in early January of 1982, and the contract called for no more than six (6) months probation, the Union argued that Mr. Douville's probation would have expired on August 1, 1982. The Union further claimed that no "Grade IV operations license" was required of Mr. Douville's position and that, therefore, Mr. Douville deserved to be taken off probation and "made whole" by being made foreman and paid as such from the date of reinstatement.

The City denied any infraction of RSA 273-A and further claimed it did follow the arbitrator's award and reinstated Mr. Douville and paid him retroactively to August 22, 1982 (one month after his actual firing) and that Mr. Douville was "made whole in compliance with the arbitrator's decision". The City further agreed that Mr. Douville was promoted to foreman on February 1, 1982 and did keep Mr. Douville on probation when he was reinstated, and further claimed that the formal position did require a "Grade IV license" and that Mr. Douville's probation as foreman was "stayed" on the date of discharge. The City further argued that the requirement of the "Grade IV license" was never a subject of a grievance and, therefore, the complainant had not exhausted his administrative remedies.

A hearing was held in PELRB office on October 27, 1983 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing the chronology of events was reiterated and lengthy testimony was received concerning the requirement of a "Grade IV license" and that in April of 1983 this requirement applied to either the operator (shift at the time, of the plant) or to the chief operator of the plant, meaning in essence that all operators were no longer absolutely required to have a "Grade IV license", if the chief operator possessed it.

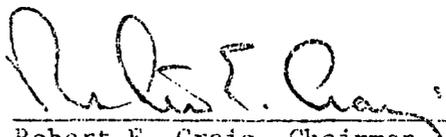
DECISION

The order of the arbitrator was as follows:

"The grievant shall be reinstated with full seniority and shall be given a month suspension. He shall be made whole for the remaining period, less any interim earnings and unemployment benefits".
(emphasis added)

Mr. Douville was not made whole if his probationary period was "stayed" since the phrase must mean as close as possible to the situation, as if he were in the position all the while. Mr. Douville was unfairly discharged, therefore, he should have lost only one month seniority and one month probationary period. His probationary period should have expired in August of 1982 and he should be reinstated to that position regardless of the possession of the "Grade IV license".

It is so ordered.


Robert E. Craig, Chairman

Signed this 7th day of December 1983.

Chairman Robert E. Craig, presiding. Members present and voting Seymour Osman and Russell Verney. Also present, Evelyn C. LeBrun, Executive Director.