



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES, LOCAL 2715

CASE NO. A-0498

v.

Decision No. 84-24

JAMES O'FLYNN, HILLSBOROUGH COUNTY
SHERIFF

APPEARANCES

Representing AFSCME, Local 2715

James J. Barry, Jr., Esq.
James C. Anderson

Kenneth Kustra
Jim Gray

Representing James O'Flynn, Hillsboro County Sheriff

David Horan, Esq.
John Brobula

Richard W. Roulx

Also Present

Patty Howard, Manchester Union Leader

BACKGROUND

On January 16, 1984, AFSCME, Local 2715, filed unfair labor practice charges against James O'Flynn, Sheriff of Hillsborough County, **alleging** a breach of RSA 273-A:5 in that the Sheriff refused to participate in the arbitration of a grievance as required by their contract. A hearing was held at PELRB office in Concord, on March 22, 1984.

AFSCME, Local 2715, has a negotiated collective bargaining agreement with Hillsborough County Commissioners and the Hillsborough County Sheriff effective July 1, 1982, to June 30, 1985. The agreement includes grievance procedure, providing for binding arbitration.

FINDINGS OF FACT

On August 24, 1983, Sheriff O'Flynn discharged Kenneth Kustra from his position, as Deputy Sheriff. Mr. Kustra and AFSCME, Local 2715 filed a grievance and requested arbitration. The Sheriff refused arbitration and sought injunctive relief in Superior Court, which court advised them to bring action before PELRB.

RULINGS OF LAW

At hearing, Counsel for AFSCME, Local 2715 argued that the contract requires arbitration in disputes over the contract and that questions of "arbitrability" are the first ones addressed in the arbitration process and should not be brought to PELRB.

Counsel for Hillsborough County argued that under the section (Article 1, Section 1.7) of the contract referred to, as required by the grievance process, the Sheriff specifically retained his statutory power, under RSA 104:3 and RSA 104:27, to hire and fire his deputies and that the collective bargaining agreement did not effect his power and, therefore, need not be submitted to arbitration.

The PELRB finds that in order to dismiss this complaint it would be required to agree to the interpretation of the contract as put forward by the county, and declines to do so. PELRB finds that the first stage of the arbitration process is necessarily concerned with the question of "arbitrability", involving the meaning surrounding the contract and its grievance procedure, and declines to put itself (PELRB) in place of the process agreed to by the parties to the contract. Where the parties have agreed to a process to resolve their disputes, that process must be allowed to go forward by both parties, regardless of how strongly each may feel its interpretation of the contract is correct. One party's interpretation of the contract cannot be accepted in place of a process for dispute resolution, if a grievance procedure is to have real and significant results, accepted as fair by all parties.

DECISION

PELRB finds an unfair labor practice, as charged, violating RSA 273-A:5 (b). PELRB orders the Sheriff of Hillsborough County to proceed with the complaint of the grievant, Kenneth Kustra, to arbitration under the terms and provisions of the contract between AFSCME, Local 2715 and the department.

Robert E. Craig, Chairman ;

dated this 22nd day of March, 1984

by unanimous vote Robert E. Craig, Chairman presiding. Members Robert Steele and Russell Verney and voting. Also present, Evelyn C. Brun, Executive Director.