



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF SOMERSWORTH
Complainant
v.
LOCAL 863, AFSCME, COUNCIL (3
Respondent

CASE NO. A-0412:5

DECISION NO. 87-35

APPEARANCES

Representing the City of Somersworth:

Judith E. Hotham, Esquire

Representing Local 863, AFSCME, COUNCIL 93:

James C. Anderson, Director

Also Appearing:

Paul F. Flayhan, P.A.B. Chairman
Philip L. Munck, City of Somersworth
Alfred G. Couture, Jr., Somersworth, N.H.

BACKGROUND

The City of Somersworth ("City") on January 16, 1987, filed an improper practice charge against Local 863, AFSCME, Council 93, ("Union") alleging that the Union had improperly demanded arbitration of a grievance contrary to the procedure in the collective bargaining agreement.

The Union responded that it had properly filed for arbitration under the contract and that any question of arbitrability should be left for the arbitrator.

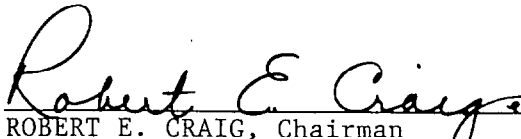
A hearing was held at the PELRB office in Concord, N.H. on April 9, 1987 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW:

1. The grievance process in the contract is clear and does not require filing for arbitration within twenty (20) days of the receipt of the grievance by the "Personnel Advisory Board". (Article XI, 11.4 (step 3))
2. The Union argued that the unfair labor practice charge was untimely filed (on January 16, 1987) since the incident complained about occurred in June of 1986 and was therefore beyond the six (6) months rule of RSA 273-A:6, VII.
3. The Chairman of the "Personnel Advisory Board" testified that he had received the (Couture) grievance on the evening of June 17, 1986, and had so noted on the copy which he kept at home, but could not recall who had delivered it.
4. The Union Steward (Couture) testified that on June 17, 1986, he delivered the grievance to the daughter of the Personnel Advisory Board Chairman and not to the Chairman himself and had no knowledge of when the Personnel Advisory Board "received" the grievance.

DECISION AND ORDER:

- A. The unfair labor practice complaint alleges violations of the contract occurring in June of 1986 but was not filed until January of 1987. The complaint is untimely filed.
- B. The complaint is hereby dismissed and the parties are remanded to their grievance process.


ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 11th day of May 1987.

Chairman Robert E. Craig presiding. Members Richard E. Molan, Seymour Osman, Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.