



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 1801/
COUNCIL 93 LONDONDERRY POLICE UNIT

Petitioner

v.

LONDONDERRY BOARD OF SELECTMEN

Respondent

CASE NO. A-0454:7

DECISION NO. 90-07

APPEARANCES

Representing AFSCME, Local 1801 Londonderry Police Unit:

James C. Anderson, Staff Representative

Representing Londonderry Board of Selectmen:

Gary W. Wulf, Chief Negotiator

Also appearing:

Cynthia McCann, Local 1801
Joseph Maccarone, Local 1801
Richard J. Bannon, Town of Londonderry
Dick Hodgkinson, Town Of Londonderry

BACKGROUND

On April 6, 1989 Council 93 AFSCME Local 1801, Londonderry Police Unit, filed unfair labor practice charges against the Londonderry Board of Selectmen alleging a violation of 273-A:5 I (g), (h) and (i) adopting certain changes in a disciplinary code which changed the terms and conditions of employment and invalidated certain portion of an agreement. The disciplinary code had been in place since 1985 and through the adoption of several negotiated contracts, but never approved or agreed to by the Union as part of the collective bargaining agreement and the adoption violated Article XXIV of the CBA dealing with discipline and termination for just cause, and that the change made to the disciplinary code as of February 19, 1985 without negotiating with the Union violated 273-A:5 I (i) and requested PELRB to issue an order to the parties to negotiate any changes.

The Town by way of response admitted the revision in the Disciplinary Code but denied any breach of the negotiated agreement. They stated that the code had been in effect since 1985 and that the Union had never raised any issue of the code at negotiations or prior contracts and that no effort was made to negotiate a change in this practice and thus becomes an ongoing condition of employment.

Hearing in this matter was held on July 13, 1989 at the PELRB office in Concord, New Hampshire.

In opening statements the Union stated that there was in effect a disciplinary procedure in place in 1985 which was never approved nor agreed to as part of the CBA.

The Town stated that it was a procedural document which co-existed with the CBA and offered official guidance only and did not contradict, countermand or take away from the agreement.

Joseph Maccarone Chief Steward testified he had been approached by the Chief and asked to review the proposed changes. He discussed the written changes with AFSCME officials and cited several specific ones such as the disposal of disciplinary records auditing employees' disciplinary actions for just cause, hearing procedures and others which impacted on working conditions.

Witness Richard Hodgkinson, Town Administrator testified as to his negotiating experience with AFSCME and the action of the Board of Selectmen in accepting the changes in the code stating that changes had been made in the revision not in the original code specifically with regard to discipline and records of such discipline in employees' file, also that the code applied only to the Police Department and mainly to non-union employees. He added that the proposed revision made Section "G" of the revised code dealt with the grievance procedure.

Chief Richard Bannon testified on his involvement with the proposed revision of the code and the fact that he did present Officer Maccarone, the union steward, with a copy of the early draft and that it was not cast in stone so if changes were desired, they would be given the opportunity for input.

Anderson of AFSCME in closing stated that he had advised the Town when they were making unilateral changes to the code, it should negotiate such changes with the union or face the possibility of an unfair labor practice filing and further that the Union had no problems with the existing code, except for the proposed changes in the revision.

Wulf for the Town in conclusion stated that the Union had made up its mind early on to file an ULP and was just looking for an opportunity.

FINDINGS OF FACT

1. The Board of Selectmen adopted a Disciplinary Code on February 19, 1985.
2. A disciplinary code had existed during the negotiations of two prior contracts and the issue had not been raised by either party at the table.
3. Article XXIV of the revised disciplinary code deals with discipline and termination for just cause which is a proper subject of negotiations.
4. The revision of the disciplinary code does in fact impact upon the conditions of employment and have an effect upon the content of the negotiated agreement specifically dealing with working conditions.

5. The unilateral action of the Town in adopting the revised disciplinary code without the applicable subject matter being discussed at the table between the parties constitutes a violation of RSA 273-A:5 I (i).

ORDER OF THE BOARD

The parties are hereby ordered to include in negotiations the pertinent sections of the disciplinary code that pertain to working conditions, terminations and discharge.

Signed this 11th day of January, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Richard E. Molan, Esq. and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun.