State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF CLAREMONT, DEPARTMENT OF PUBLIC WORKS Complainant v. AFSCME, LOCAL 1348 Respondent	CASE NO. A-0402:14 DECISION NO. 92-55

APPEARANCES

Representing City of Claremont, Dept. of Public Works:

G. Michael Sanborn, Superintendent

Representing AFSCME, Local 1348:

James C. Anderson, Staff Representative

Also appearing:

Thomas Burnham, Local 1348

BACKGROUND

On November 14, 1991, the City of Claremont, Public Works Department, filed unfair labor practice (ULP) charges against AFSCME, Local 1348 (Union) alleging that the Union had violated the collective bargaining agreement (CBA) and had refused to negotiate grievances, violations of RSA 273-A:5 II (f) and (d), respectively. The Union filed its response on December 9, 1991. The matter was then set for hearing and heard by the PELRB on February 11, 1992.

The essence of the complaint in this case is that the Union failed to process grievances in accordance with the procedures set forth in the CBA. The Union disagrees, attaching a different meaning to the grievance language of the contract and claiming that the contract provides no recourse under which management is entitled to access to the grievance procedure.

FINDINGS OF FACT

1. The City of Claremont (City) is a public employer of employees employed in its Public Works Department and who are members of the bargaining unit referenced herein, per RSA 273-A:1, X.

2. AFSCME, Local 1348 is the duly certified bargaining agent of employees of the City's Public Works Department.

3. A collective bargaining agreement is in effect between the parties. It contains a grievance procedure which provides as follows:

ARTICLE 13

GRIEVANCE PROCEDURES

13.1 The purpose of the grievance procedure shall be to settle all employee grievances on the lowest practical level and as quickly as possible to insure efficiency and high employee morale. A grievance for the purpose of this Agreement shall be a complaint or claim arising between the employer and the employee regarding the meaning or application of this Agreement. Grievances arising out of matters covered by the Agreement shall be processed in the following manner, at the request of either party.

(a) Any grievance shall be filed in writing with the Department Head/Union Steward not later than ten (10) working days from its occurrence or the date when the aggrieved had reasonable notice of such grieved action or such grievance will be invalid and shall not be given any consideration.

(b) A meeting shall be held between the aggrieved employee, the Department Head, and the Union Steward within three (3) working days of receipt of the written grievance. A written decision shall be rendered within two (2) working days of the meeting.

(c) In the event that the dispute shall not have been settled at the level stated in (b) above, the decision may be appealed to the City Manger. A meeting shall be held between the aggrieved employee, the Union Representative, and/or the Union Steward, the Department Head, and the City Manager. This meeting shall be held

within three (3) working days after a written notice requesting such a meeting and a written decision shall be made by the City Manager within five (5) working days after such a meeting.

(d) In the event that the dispute shall not have been settled at the level stated in (c) above, the decision of the City Manager may be appealed by filing a demand for arbitration within ten working days of receipt of the City Manager's decision with the American Arbitration Association or any mutually agreed substitute arbitrator or arbitration tribunal. Each party shall bear the expense of its own representation. The expense of the arbitrator's service shall be borne equally by the two (2) parties. The decision of the arbitrator shall be final and binding on both parties.

(e) The retroactive date and amount of compensation to the aggrieved party shall be determined by the arbitrator.

4. On October 23, 1991, the City, by its agent, G. Michael Sanborn, Superintendent of the Water and Sewer Division, filed a grievance against the Union claiming that one of the bargaining unit employees violated Article 12, "Safety," of the CBA by the manner in which an employee parked a truck.

5. On October 24, 1991, the City by its agent, G. Michael Sanborn, Superintendent of the Water and Sewer Division, filed a grievance against the Union claiming a violation of Article 3.1, "Productivity," of the CBA because of the amount of manpower and equipment used to patch a portion of road.

6. On October 28, 1991, Thomas Burnham, President of Local 1348, wrote two memoranda to Sanborn relative to the grievances which he filed on October 23rd and 24th, respectively. In each memo, Burnham said, "The City of Claremont, under the Collective Bargaining Agreement, precisely Article 13 grievance procedure, has no recourse per contractual language. The union stands by its negotiated contractual language..."

7. By two memoranda dated October 29, 1991 from Sanborn to Burnham, Sanborn voiced his disagreement with Burnham's memoranda of October 28, 1991, saying he believed grievances could be raised "at the request of either

party" because "the City and the Union are the only two parties who negotiated this Agreement, [therefore] the City has a right to file a grievance." Sanborn also requested a meeting with the City Manager at that time.

8. By memo of October 30, 1991 from Burnham to Sanborn, Burnham said: "In response to your notice regarding the meeting with the City Manager to hear step two of your grievance against the Union, Council 93 stands behind their decision that there are no provisions for grievance recourse in this matter. Therefore we will not attend the aforementioned meeting." Supt. Sanborn filed improper practice charges on November 14, 1991.

DECISION AND ORDER

These are internal inconsistencies in the contract language appearing at Article 13 of the CBA. (Finding No. 3, above). First, it provides its purpose to be to settle "all employee grievances on the lowest practical level..." (Emphasis added) It continues, "grievances arising out of matters covered by this Agreement shall be processed...at the request of either party." (Emphasis added). Yet, in Step d, the parties contemplated only the union would appeal to arbitration because the City Manager would not appeal his own decision On its face, this language is inconsistent. The Union explained the "at the request of either party" phrase as referring to the aggrieved employee and the union, permitting the union to pursue a grievance under the contract even if the impacted employee elected not to do so. While this is a possible explanation of the language, especially when read in conjunction with the "all employee grievances" phrase, it does injustice to the notion of "parties" to the CBA. If it means "aggrieved employee and/or the union," it should be "cleaned up" to be move specific. This ambiguity causes us to look behind the contract inconsistency to the purpose for the language and what has been the practice of the parties.

The type of conduct complained of by Sanborn is subject to discipline, in varying degrees of severity, to be imposed by the employer. If that discipline is unwarranted, too severe, or inappropriate, it can be grieved under the contract. Initially, then, this would raise an issue as to why the City (or its agent) would want to pursue the two matters as grievances. Neither the City nor Sanborn would or should expect the Union to have permanent supervisory representation on the job site to correct the type of conduct complained of and referenced in Findings No. 4 and 5. The Union and its officers have no responsibilities as supervisors or foremen under the contract or in the traditional labor management context. The Union cannot be held responsible for the actions of its members when they are of the nature complained of in Findings No. 4 and 5.

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These observations, coupled with the fact that there is no past practice or past history of "employer grievances" lead us to conclude that there was no intent to create this avenue of recourse under Article 13 of the CBA.

The improper practice (ULP) charges are DISMISSED.

So ordered.

Signed this 19th day of March, 1992.

JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.