



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

JAMES LAPLANTE	:	
	:	
Complainant	:	
	:	CASE NO. M-0664
v.	:	
	:	
SULLIVAN COUNTY	:	DECISION NO. 93-07
	:	
Respondent	:	

APPEARANCES

Representing James Laplante:

Michael C. Shklar, Esq.

Representing Sullivan County:

Marc B. Hathaway, Esq.

Also appearing:

Linda Laplante
Robert Hemenway, Sullivan County

BACKGROUND

The complainant, James Laplante, filed unfair labor practice (ULP) charges against Sullivan County on April 21, 1992 alleging violations of RSA 273-A:5 I (h). Sullivan County responded by filing its answer on May 13, 1992. After numerous continuances when this matter was previously scheduled to be heard on July 14, 1992, August 4, 1992, September 15, 1992 and November 17, 1992, this matter was heard by the undersigned Hearing Officer on January 19, 1993.

FINDINGS OF FACT

1. Sullivan County is a "Public Employer" as defined by RSA 273-A:1 X.

2. The complainant was employed by Sullivan County from October of 1973 until December 31, 1992, first as a Correctional Officer, then as a receiving agent and finally as a purchasing agent, a position which he took in 1988.
3. The complainant applied for and was appointed to the purchasing agent position vacancy after that job was created in 1988. In so doing, he received a pay increase by moving from pay grade 8 to pay grade 10 and moved from a bargaining unit position (receiving agent) to an exempt position (purchasing agent).
4. The complainant knew he was moving from a unit position to a non-union position when he accepted the purchasing agent position in 1988.
5. The job description for purchasing agent (dated December 5, 1989 and identified herein as Complainant's Exhibit #3) showed the purchasing agent's classification as "supervisor." That job description was signed by the complainant.
6. The provisions of RSA 273-A:8 II prohibit employees exercising supervisory authority from belonging to the same bargaining unit as the employees whom they supervise.
7. The parties' last collective bargaining agreement, effective for the period August 10, 1988 through December 31, 1989 and identified in these proceedings as Complainant's Exhibit #4, recognizes the union as the exclusive bargaining agent for various positions some of which would be in a supervisory-subordinate relationship to the purchasing agent. That document also specifically excludes the position of Purchasing Agent from recognition and coverage under that agreement.
8. The parties' last collective bargaining agreement contains provisions pertaining to seniority and layoff (Article XIII). In particular, Article XII (C) (I) provides that "employees with the least job seniority in [a] classification should be laid off first and assigned to the next lower job classification, if any, for which they have the necessary qualifications, provided, however, that a laid off employee shall not be assigned any such lower job classification unless that employee has longer department seniority than other employees in the lower job classification." The complainant believes he has seniority or "bumping" rights under the forgoing contractual language and, while he is asserting access to those rights by the

bringing of this ULP, asserted no statutory rights to such seniority or "bumping" entitlement.

9. The Sullivan County Commissioners wrote a letter to the complainant on December 4, 1991 (Complainant's Exhibit #1) indicating that the position of purchasing agent had been designated for layoff effective January 1, 1992. The complainant was laid off effective January 1, 1992 and has remained unemployed since that time.

DECISION AND ORDER

The complainant in this case claims that the County has violated RSA 273-A:5 I (h), i.e., that it has violated a collective bargaining agreement (CBA). He expressed a belief that he is covered by that agreement, namely its seniority provisions, so that he would be able to "bump" back into the receiving agent position, a job which he had previously performed, for which he is qualified, and which is in the bargaining unit.

The complainant's positions are unsustainable for three reasons. First, the contract specifically excludes the purchasing agent's job from coverage. As an excluded position, the purchasing agent can not exercise or claim layoff and recall rights under Article XIII or other portions of the collective bargaining agreement. Second, the purchasing agent position is supervisory in nature, a characteristic which the complainant acknowledged when he signed the purchasing agent job description in 1989. As such it can not co-exist with other bargaining unit positions over which the purchasing agent has supervisory authority. RSA 273-A:8. Thus, the contractual recitations of the recognition clause merely reflect the state of the law relative to the purchasing agent's supervisory authority over subordinates. Third and finally, the complainant's responsibility to undertake the job tasks of the receiving agent in his/her absence does not bring the purchasing agent's position back into the bargaining unit or make it eligible for benefits extended under the CBA.

For these reasons, the charge of ULP must be DISMISSED.

So ordered.

Signed this 26th day of January, 1993.



PARKER DENACO, Hearing Officer