



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HILLSBOROUGH COUNTY :
DEPARTMENT OF CORRECTIONS :

Complainant : CASE NO. A-0428:93

v. : DECISION NO. 95-117

AMERICAN FEDERATION OF :
STATE, COUNTY & MUNICIPAL :
EMPLOYEES, LOCAL 3657 :

Respondent :
:

APPEARANCES

Representing Hillsborough County Dept. of Corrections:

Carolyn Kirby, Esq.

Representing AFSCME:

James C. Anderson, Staff Rep.

Also appearing:

Richard Roulx, Hillsborough County
James O'Mara, Hillsborough County
James Vacca, AFSCME, Local 3657
Joe Talbot, AFSCME, Local 3657

BACKGROUND

The Hillsborough County Department of Corrections (County) filed unfair labor practice (ULP) charges and a Motion to Stay Arbitration against the American Federation of State, County and Municipal Employees (AFSCME) (Union) on February 13, 1995 alleging violations of RSA 273-A:5 II (f) and (g) because the union attempted to process a grievance for a position the County

claims is not in the bargaining unit. AFSCME filed its answer on March 1, 1995. A pre-hearing conference was conducted by a PELRB hearing officer on April 27, 1995. Thereafter, after continuances sought by and granted to the parties on June 20, 1995, July 27, 1995, August 29, 1995 and October 17, 1995, this matter was heard by the PELRB on October 26, 1995. At the close of that hearing, the record was held open until November 10, 1995 for the parties to file post-hearing briefs.

FINDINGS OF FACT

1. Hillsborough County is a "public employer" of persons employed at its Department of Corrections within the meaning of RSA 273-A:1 X.
2. Under a "Recognition of Exclusive Representative" order dated December 7, 1976 and designated "Case No. A-0428," AFSCME, then-local number 2715, was recognized as the exclusive representative for "deputy sheriffs and correctional officers of the County Jail; deputy sheriffs, secretary, clerk typists and account clerks of the Sheriff's Department; correctional officers [and] security guard at the House of Corrections employed by the County."
3. The County and AFSCME are parties to a collective bargaining agreement (CBA), for the period July 1, 1990 through June 30, 1995 and continuing thereafter under certain conditions. Article 1.1 of that agreement contains a recognition clause by which the County, through its commissioners, recognizes AFSCME as the exclusive bargaining agent for the following job classifications within its Department of Corrections: Clerk Typist II, Secretary II, Account Clerk I, Account Clerk II, Clerk Typist I, Secretary I, Correctional Officer I, Correctional Officer II, Cook I, Cook II, Nurse I, Nurse II, Maintenance Worker I, Maintenance Worker II, Maintenance Worker III, Switchboard Operator/ Receptionist, Food Service Supervisor, CO/ Housekeeping Supervisor and K-9 Correctional Officer. Corrections officer is not part of that list.

3. On June 21, 1994, Teamsters Local 633 of New Hampshire (Teamsters) was certified as the bargaining agent for the following supervisory positions at the Hillsborough County Department of Corrections: lieutenants, corrections training assistant, maintenance supervisor and work release supervisor. On September 27, 1994, that unit was amended, by an agreed upon Modification Petition, to include the job classifications of lieutenants, corrections training assistant, maintenance supervisor, work release supervisor, education director, records supervisor, E.I.P. supervisor and classification corrections officer. The last cited position, that of classification corrections officer (hereafter "CCO"), is the subject of these proceedings.
4. On November 30, 1994, Paul Lemieux, the classification/corrections officer, or as he called himself, the "classification specialist," filed a Step II grievance relative to his work schedule over the 1994 Thanksgiving holiday. He claimed, among other charges, that the County violated Article 8.2 of the CBA, namely, "if a full time employee, whose regular work schedule is based on an administrative work week on Monday through Friday, is required to work on one of the holidays listed in Section 8.1 [which includes Thanksgiving Day and the day thereafter], then that employee shall be paid in accordance with the overtime provisions of Article V, Section 5.2 (a), in addition to a regular day's pay for the holiday."
5. On December 7, 1994, Department of Corrections Superintendent James O'Mara wrote Stephen Powers, steward for Local 3657, denying the grievance because the grievant, Lemieux, was not in the bargaining unit and, therefore, not covered by the CBA between the County and AFSCME. This pending ULP then ensued.
6. O'Mara Superintendent at the Department of Corrections since 1990. He was aware of the certification issued to Teamsters Local 633 and the fact that the contested CCO position was in the bargaining unit for supervisory personnel. County Exhibit No. 3. O'Mara met with the incumbent

CCO after the position was created and expressed his feeling that the position was one of a supervisory nature. Notwithstanding this, O'Mara testified that, during negotiations, the CCO position was offered to AFSCME, now Local 3657, if they would agree to the Food Service Supervisor as a supervisory position. This concession was never formalized between the parties.

7. Richard Roulx was the Business Manager for the County for until his retirement in November of this year. He was the County's signatory to the Modification Petition with the Teamsters on September 26, 1994. Finding No. 3, above. He, too, recalled certain position or job classification issues being discussed with AFSCME between 1989-90, when new positions were created to service the new jail, and 1993 when the parties last presented this particular issue, along with others, to fact finding without the matter of the CCO position ever being resolved. Roulx's negotiations notes show the CCO position open and unresolved as of June 19, 1990 (County Exhibit No. 12), still excluded as of March 22, 1991 (County Exhibit No. 13), open for trade for account clerk II's and sergeants on April 3, 1992 (County Exhibit No. 14), open for trade in exchange for Account Clerk II, Food Service Supervisor, K-9 Officer and Maintenance/Dietary Officer on June 15, 1992 (County Exhibit No. 15) and identified as unresolved and presented to the fact finder on March 4, 1993 (County Exhibit No. 17).
8. AFSCME staff representative James Anderson testified that he had discussed the CCO position with the former Director/Superintendent Thomas Neumayer at the time new positions were created in 1988-89. Since the certification officer or specialist first had to be a corrections officer before being eligible for appointment to this specialty, Anderson then took and still takes the position that the CCO is in the AFSCME bargaining unit.

DECISION AND ORDER

First, the CCO position was not listed in Article I or Article XVII of the CBA between the County and AFSCME for 1990-

1995. Thus, AFSCME was on notice during the course of negotiations and, even more so, at the time of signing the CBA on August 24, 1994, that the CCO position was not covered by the CBA.

Second, the record is replete with examples of exchanged proposals between 1990 and 1993 where the issue of the placement of the CCO position was raised but never resolved. Finding No. 7. AFSCME cannot rely on that lack of resolution as a basis for claiming that the CCO position is in the bargaining unit represented by Local 3657. Likewise, the prerequisite argument used by AFSCME (Finding No. 8) fails. Notwithstanding that one must be a corrections officer before becoming a classification specialist/CCO, the assigned pay grades for corrections officers are 13 and 15. The pay grade for the CCO is pay grade 16. This is further evidence that the CCO is not incorporated by reference or otherwise in the corrections officer positions referenced in Articles I and XVII of the CBA.

The Union's insistence on processing the Lemieux grievance violates the CBA because the grievant is not covered by the CBA. This constitutes an unfair labor practice under RSA 273-A:5 II (f). The Union is directed to cease and desist from further processing of the grievance.

So ordered.

Signed this 18th day of December, 1995.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.
Members E. Vincent Hall and William Kidder present and voting.