

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEA, Local 1984 SEIU, Belknap County
Jail Employees

Petitioner

v.

Belknap County, Department of Corrections

Respondent

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Case No. S-0333-4

Decision No. 2002-092

BACKGROUND

The SEA, Local 1984 SEIU, Belknap County Jail Employees, (hereinafter referred to as the "Union") filed unfair labor practice charges on May 9, 2002 pursuant to RSA 273-A:5 I (h) alleging that the Belknap County, (hereinafter referred to as the "County"), through the conduct of its agents have failed to follow grievance procedures and failed to bargain in good faith by not responding to a grievance involving an alleged assignment of an officer with less seniority than another to a shift. The Union seeks relief in the form of an Order compelling the County to arbitrate the stated grievance and to desist from undertaking further alleged unilateral actions.

The County filed its answer in a timely fashion on May 24, 2002. The County denies that it made any assignment to a vacancy in violation of the parties' agreement or that it did not bargain in good faith. It also asserts in its answer that the Union did not exercise any grievance rights that may otherwise be available because it did not submit its grievance in a timely fashion.

The County requests that the PELRB dismiss the complaint filed by the Union or otherwise deny the relief being sought by the Union. At the Pre-Hearing Conference, the parties agreed that an oral Motion to Dismiss could be made by the County's counsel and that an oral Objection to that motion could be made by the Union's representative at that time and each was so recorded. The parties further agreed that if they were able to agree on all facts necessary for a determination as to whether the Union's grievance was timely filed, no evidentiary hearing would be required for a determination on the Count's Motion to Dismiss.

The Hearing Officer considered all the parties' filings, their agreed statement of facts and the memorandum submitted by each party. It found as follows:

PARTIES' STIPULATED FACTS

The facts appearing below were jointly submitted by agreement of the parties and are hereby incorporated into this decision and order:

1. The date of the alleged violation of the collective bargaining agreement giving rise to the grievance underlying this unfair labor practice charge was November, 12, 2001
2. The Grievance Procedure, which is set forth in Article 13.4.1 of the collective bargaining agreement, requires that the written grievance must be submitted within ten (10) working days after the contractual violation occurred to be entitled to consideration in any forum.
3. The Petitioner's grievance was drafted on December 3, 2001, post-marked on December 4, 2001 and received by Superintendent Joseph Pannarello, on behalf of the Respondent, on December 5, 2001.
4. To be timely filed within the limits set forth in the Grievance Procedure – Article 13.4.1 Step I of the collective bargaining agreement currently in force between the Petitioner and the Respondent, the grievance must have been filed on or before November 26, 2001.
5. Notwithstanding the dispute between the parties regarding the alleged preparation and subsequent filing of an additional grievance letter dated November 30, 2001, it is hereby stipulated that even if said grievance was, in fact, filed as set forth above it would not be timely filed as required by the Grievance Procedure – Article 13.4.1 of the current collective bargaining agreement.

And the hearing officer further finds:

6. SEIU Local 1984, Chapter 56, hereinafter the Union, is duly certified exclusive representative for full time and part time regular employees in the positions of Sergeant and Correctional Officers as determined by Public Employee Labor Relations Board pursuant to RSA 273-A:8 and RSA 273-A:10 and a CBA between the parties from January 1, 2000 through December 31, 2002 Recognition Clause.
7. Belknap County, hereinafter the County, employs Correctional Officers and Sergeants and other personnel in the operation of its County Jail and thus is a Public Employer within the meaning of RSA 273-A:1 IX.

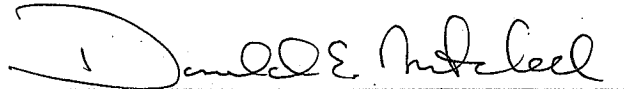
DECISION AND ORDER

The parties have stipulated that there are no facts in dispute that are necessary to a decision on the County's Motion to Dismiss. The parties' relationship is subject to a collective bargaining agreement. That agreement contains a provision in its grievance procedure, specifically Article 13.4.1, that requires a written grievance must be submitted within ten (10) working days of the alleged violation. The action of the County, *i.e.* the County's alleged assignment of Officer Tanya Graves to the detriment of Officer Dave Berry, occurred on November 12, 2001. The parties have agreed that no grievance was filed by the Union with the County within ten (10) working days as required under the parties' CBA.

Lacking any further facts that might otherwise mitigate a late filing of the grievance by the Union, and after considering the reasonable inferences that may be drawn from the parties' stipulated facts in a light most favorable to the Union, the hearing officer finds the Union's filing of its grievance to be untimely. Therefore, the Motion to Dismiss this complaint is GRANTED.

So ordered.

Signed this 6th day of August, 2002.



Donald E. Mitchell, Esq.
Hearing Officer