



NH Supreme Court declined appeal of this decision on June 29, 1999, NH Supreme Court Case No. 99-031.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE,	:	
COUNTY & MUNICIPAL EMPLOYEES	:	
(AFSCME), LOCAL 3657	:	
	:	CASE NO. A-0550:13
Complainant	:	
	:	DECISION NO. 1998-101
v.	:	
	:	
TOWN OF LITCHFIELD	:	
	:	
Respondent	:	

APPEARANCES

Representing AFSCME, Local 3657:
Vincent Wenners, Esq., Counsel

Representing Town of Litchfield:
Heather Burns, Esq., Counsel

Also appearing:
Lt. Gerard Millette, Town of Litchfield
Cecil Williams, Town of Litchfield
Timothy C. Jones, AFSCME
Joe Maccarone, AFSCME
Karen D. Jones

BACKGROUND

The American Federation of State, County and Municipal Employees (AFSCME), Local 3657 (Union) filed unfair labor practice (ULP) charges against the Town of Litchfield (Town) on August 20, 1998 alleging violations of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i) for interfering with union administration of an employee organization, for breach of contract and for direct dealing caused by the Town's suing a bargaining unit member for liquidated damages under a training agreement when he left before completing thirty-six (36) months of employment. The Town filed its answer on August 28, 1998. This matter was then heard by

the PELRB on November 10, 1998 after an intervening continuance sought by and granted to the parties.

FINDINGS OF FACT

1. The Town of Litchfield employs police officers and other personnel in the operation of its police department and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The American Federation of State, County and Municipal Employees is the duly certified bargaining agent for full and part time employees of the Town's police department in the job categories of patrolman, clerk, secretary/dispatcher, field training officer and detective sergeant. (Town Ex. No. 8)
3. The Union and the Town are parties to a collective bargaining agreement (CBA) for the period May 25, 1994 to March 31, 1997 (Town Ex. No. 12). It continues thereafter under the *status quo* doctrine pending resolution of a successor agreement. The 1994-1997 CBA does not speak to the issue or existence of training agreements; however, Article 10 thereof does define a probationary period of six (6) months after graduation from the police academy. Article 34 of the contract provides that it "constitutes the entire agreement of the Town and the Union...except such amendments hereto as shall have been reduced to writing and signed by the parties."
4. On or about June 2, 1996, Timothy C. Jones was selected as a newly hired police officer by the Town. On June 3, 1996 he signed a "Training Agreement" with the Town requiring certain liquidated damages were he to leave his employment with the Town "during training or within the first thirty-six (36) months subsequent to taking the oath of office." (Town Ex. No. 2.) Jones was a probationary employee when he signed the Training Agreement. Use of training agreements by the Town dates back to June of 1986 or earlier. (Town Ex. No. 9 and testimony of Lt. Jerry Millette.) AFSCME filed the Petition for Certification for this unit in 1990. (Town Ex. No. 7.) Both Millette and former selectman Cecil Williams testified that training agreements were used to discourage what was described as a "significant turnover problem" when the Town tried to compete with larger communities

in retaining its trained and academy certified police officers. Jones testified that he understood he would not have been hired had he not signed the training agreement.

5. Jones was a member of the Town's Police Department bargaining unit as a full-time employee from June 3, 1996 until May 2, 1998, although his status as a "public employee" under RSA 273-A:1 IX would not have begun until he was no longer in probationary status. (Town Ex. No. 5.) His employment terminated on May 2, 1998 as the result of his resignation, according to the declaration attached to the Writ of Summons which was attached to the Union's ULP. On or about July 29, 1998 the Town brought suit against Jones in Hillsborough County Superior Court for breach of contract and recovery under the liquidated damages provisions of the training agreement.

6. Joe Maccarone, President of AFSCME Local 3657 and a police officer in Londonderry, testified that the Union considered the training agreement (Town Ex. No. 2.) to be an unenforceable "Yellow Dog contract" because it was equivalent to a pre-employment contract which becomes unenforceable and subservient to the CBA once the individual involved becomes subject to the CBA, i.e., off probation. He also testified that it was his experience that pre-employment agreements are only enforceable if the Union has "signed off" on them and that such agreements which extend beyond a probationary period must be bargained with the certified bargaining agent.

DECISION AND ORDER

RSA 273-A:11 requires employers to accord to certified bargaining agents (1) the right to represent employees in collective bargaining negotiations and in the settlement of grievances and (2) the right to represent the bargaining unit exclusively and without challenge during the term of the agreement and, presumably, the extended term, under the *status quo* doctrine. See Appeal of Nashua Board of Education, 141 NH 768, 777 (1997). Thus, the Union has the right to assert alleged violations of its CBA which involve or impact any of the bargaining unit members who are "public employees'" as defined in RSA 273-A:1. RSA 273-A:10 IV speaks to the certified bargaining agent's status as the "exclusive representative of the bargaining unit," i.e., it can seek enforcement of contractual rights and benefits without regard to whether the aggrieved individual is a member of the union. In conjunction with this, RSA 273-A:11 I provides that any

resolution of a grievance "shall not be inconsistent with the terms of an existing agreement between the parties." No mention is made as to whether that resolution may involve only union members or may include non-members, too. The CBA belongs to the parties, namely, the Town and the Union.

With this background clearly in focus, we look to the facts of this case. Jones signed a training agreement in 1996. He acknowledged he knew he would not have been hired had he not signed the agreement, a fact also confirmed in the testimony of Millette and Williams. Thus, there was a *quid pro quo* or "consideration" associated with the signing of the training agreement. When we look at that agreement, we see that it contemplates that the signing officer will work for the Town for thirty-six (36) months in exchange for the training and certification(s) to be received, the costs of which are significant. In the instance that the officer, while remaining able and competent to do so, fails to complete the prescribed 36 months of employment, there is a contractual provision for "liquidated damages." This is triggered when there is a breach of contract, not to be confused with a breach of collective bargaining agreement. From the evidence presented to us, it appears there was a breach of contract, *i.e.*, the training agreement, but not a breach of the collective bargaining agreement, the latter being actionable under RSA 273-A:5 I (h).

Finally, when we compare the training agreement and the CBA, we can find no ways in which they conflict. As the Union asserted, the CBA, which explains itself as the "entire agreement" between the parties (Finding No. 3), controls the wages and benefits of bargaining unit members. It would prevail over conflicting language in the training agreement, but the wages and benefits conferred by the CBA are not impaired by the training agreement signed by Jones. For us to invalidate a private contract between Jones and the Town over subject matter not contained in the CBA would be as obtuse and inappropriate as invalidating an installment sales contract between Jones and Sears. The subject matter of the training agreement, inclusive of the portion thereof which creates a contingent financial obligation, simply is not actionable under RSA 273-A:5 I. There is no nexus between it and the CBA. The Union has failed in its burden of proof and the ULP is DISMISSED.

So ordered.

Signed this 19th day of November, 1998.


 JACK BUCKLEY
 Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding. Members Seymour Osman and Daniel Brady present and voting.