

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

American Federation of State, County :	
and Municipal Employees, AFL-CIO, :	
Local 298 :	CASE NO. A-0458
:	
v. :	DECISION NO. 81-04
:	
City of Manchester, New Hampshire :	
:	

APPEARANCES

Representing the complainant, Local 298:

James J. Barry, Jr., Esquire, Counsel

Representing the City of Manchester:

Thomas Clark, Esquire, Counsel

Witnesses:

James C. Anderson, President, Local 298  
Leon Morrisette, Chief Steward  
Eugene La Bonte, Equipment Maintenance Superintendent  
Donald Martel, Loader Operator  
Alfred Parent, Head Custodian  
William J. McDonough, Executive Director  
Wilbur L. Jenkins, Personnel Director

BACKGROUND

On July 26, 1979, Local 298, American Federation of State, County and Municipal Employees (AFSCME) filed unfair labor practice charges against the City of Manchester (City) alleging the Board of Mayor and Aldermen decided as of July 2, 1979 to cease all planned overtime without input from or regard for the concerns of the local representative, AFSCME, which in effect caused many employees to lose substantial financial benefits.

The City felt that the so-called planned overtime was not a negotiable subject, not covered under the existing agreement and well within managerial policy.

Hearing was held in the Board's office on November 15, 1979 and evidence and testimony presented by all parties of interest.

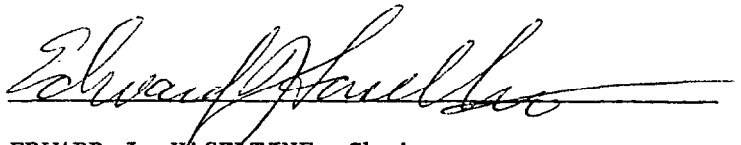
FINDING OF FACTS

1. It has been the custom of the City for over 30 years to give employees operating heavy equipment, one hour each day and four hours on Saturday to do major cleanup and mechanical repairs to the equipment, commonly referred to as "grease time".
2. The planned overtime was an incentive for employees to bid for heavy equipment operator jobs.
3. Employees received regular overtime for snow storms, sewer breaks or other emergencies in addition to the scheduled overtime.
4. Elimination of the planned overtime was instituted in an effort to reduce the tax burden.
5. Overtime is a managerial prerogative.

DECISION AND ORDER

After careful review and consideration of all the evidence and exhibits presented at the hearing, the Board rules that overtime is not a subject of mandatory negotiations. It is, however, a permissive subject of negotiation through mutual consent of the parties involved.

The Board finds no unfair labor practice, therefore no violation of RSA 273-A and the complaint is hereby dismissed.



EDWARD J. HASELTINE, Chairman  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 10th day of April, 1981.

All concurred. Chairman Haseltine presiding. Members Mayhew, Osmand and Hilliard present and voting. Also present, Executive Director, LeBrun.

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FINDINGS OF FACT AND RULINGS OF LAW

Under RSA 273-A:5I(e) and (h) and (i) it is an unfair labor practice to refuse to negotiate in good faith, to breach an existing collective bargaining agreement or to make any law or regulation which would invalidate any existing agreement. At the hearing, the City of Berlin explained its economic and budgetary problems. It also referred to the portion of the contract, Article 2 section 1 which states that plaintiff union "unreservedly accepts and recognizes the necessity of the Fire Department to operate within its budget as set by the City Council". The City referred to this section to indicate that when budgetary amounts were insufficient, specific portions of the contract should be voidable or changeable to fit in with economic realities in the City. The City's evidence indicated that the efforts by the City Manager and Fire Chief to discuss proposed changes with the union were an effort to negotiate and communicate economic needs and were not unilateral changes. However, the evidence presented by the union and the clear evidence as presented in exhibits and letters indicated that unilateral changes were in fact made to the manning, vacation and sick slip systems.

While the Board is aware of the financial problems facing Berlin and other cities, unless both parties to a collective bargaining agreement agree to change that agreement, the specific terms of that agreement must be followed by both parties while the agreement is in effect. Therefore, to unilaterally change provisions of a contract to attempt to save money, while perhaps understandable, is not acceptable behavior under RSA 273-A. Regardless of motive, the clear evidence was that the city maintained the manning requirements were inoperative and so operated the department, the sick slip practice was changed without negotiation and the vacation procedures were changed unilaterally, albeit after protest they were again modified to a third system, still not the result of negotiations nor agreed upon by the union.

Because of these findings and facts, the Board is constrained to find a violation of RSA 273-A:5I(h).

The Board is unable to find that the language in the contract recognizing the need to act within budgets serves in any way as an excuse or justification for unilaterally changing the contract. The specific terms of the contract control and the general recitation of the need to act within the budget cannot be cited to allow management carte blanc in interpreting the contract or ignoring it when economic pressures occur. The City has suggested that because the manning clause is not a subject which the union can require the City to negotiate, somehow any agreement thereon would be illegal. This flies in the face of the doctrine that parties may agree on things which they do not necessarily have to negotiate about and since the parties chose to agree on a manning and staffing provision, and since they legally entered into the contract with that provision, the Board will not and cannot find that agreement to have been illegal, there being no prohibition against agreements on these matters in any statute. The only prohibition is against forcing negotiations on matters of management discretion. Management was not forced to discuss it, management chose to discuss it and to agree upon it. That agreement is binding.

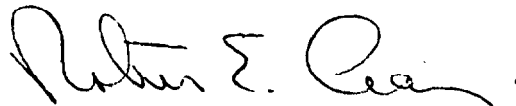
Despite the allegations by the union that the course of conduct by the City represented an attempt to dominate the union and fail to negotiate properly for a new contract, the Board is unable to find any such violation from the facts presented. Also, the reduction in force, eliminating Mr. Dube, was done according to authority rules and before the City knew of his membership on the bargaining team and cannot constitute an unfair labor practice.

The Board would comment to the parties that in economic stress periods, when problems exist or proposed resolutions of these problems are suggested by either party, the parties would be well advised to sit down and negotiate to work out agreements to solve the practical and economic problems. Parties cannot make unilateral changes of existing contracts. The Board urges the parties to meet and negotiate concerning these matters.

#### ORDER

The Board issues the following order:

1. Based upon a preliminary showing of apparent violation of the contract, the Board orders the Berlin Fire Department to reinstate its policies and practices under the contract regarding vacation selection and list, minimum manning and sick slips as they existed January 1, 1981, said reinstatement to last until mutual agreement between the parties as to changes or an arbitrator's award on the issues.
2. The Board orders all three issues be pursued under the grievance procedures in the contract, hearing thereon to be held within ten days of the effective date of this order at the latest. No presently scheduled arbitration sessions are to be delayed by this order.
3. This order is delayed until February 27, 1981 at 5:00 P.M. Until that time, the parties are urged to meet and attempt to resolve all issues arising out of the financial problems of the City of Berlin as they affect the Fire Department.
4. The Board declines to find an unfair labor practice in the dismissal of employee Dube or involving alleged harassment and issues no cease and desist order in relation thereto.
5. The parties are ordered to report progress on all matters February 27, 1981 and ten days intervals thereafter until settlement or arbitrator's report.



Robert E. Craig, Alternate Chairman

All concurred, Members Steele and Hilliard also voting. Member Anderson also present did not vote. Also present Evelyn C. LeBrun, executive director.

Signed this 26th day of March, 1981