



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA FIREFIGHTERS' ASSOCIATION,
LOCAL 789

Complainant

v.

CITY OF NASHUA, NEW HAMPSHIRE

Respondent

CASE NO. F-0105:13

DECISION NO. 85-47

APPEARANCES

Representing the Nashua Firefighters' Association, Local 789

Vincent Weners, Esq., Counsel

Representing the City of Nashua, New Hampshire

Abilio Mendez, Esq., Counsel

Also in Attendance

Pat Morahan, Nashua Fire Dept.

Raymond Seymour, Nashua Firefighters' Assoc.

BACKGROUND

On March 13, 1985, the Nashua Firefighters' Association, Local 789, International Association of Firefighters, filed unfair labor practice charges against the Mayor and Board of Fire Commissioners of the City of Nashua. In their charge, the firefighters claim that the City has violated RSA 273-A:5, I (c), (g), (i), in that the department did adopt new regulations covering hair length and style for members of the department contravening accepted practice in the department and failing to negotiate these changes with the Union. The Union further claimed that this change will cause "irreparable harm and emotional trauma" for various members of their Union and asked the Public Employee Labor Relations Board for an immediate cease and desist order.

The City answered the charge by denying any violation of RSA 273-A and pointing to several decisions of the U.S. Supreme Court in which the subject of hair length regulations and other such personal appearance items were held to be governable by a department under the need for a "discipline, esprit de corps and uniformity" in dealing with a uniformed service. The City further pointed out that the N.H. Supreme Court has also supported this interpretation.

The City further argued that no cease and desist order need issue since any grievance over this matter can be settled in other legal arenas.

A hearing was held in the Public Employee Labor Relations Board's office in Concord, New Hampshire on March 19, 1985 and again on March 28, 1985, with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

Hearing on Request for Cease and Desist Order on March 19, 1985

At the hearing it was determined that the department had an established personal appearance regulation dealing with the length of hair that had been promulgated as a general order to the department from Chief Navaroli on March 2, 1980 and that this memorandum required a certain length of hair and mustaches and sideburns and that with this order was an accompanying two-page set of drawings indicating what was acceptable and not acceptable with respect to the hair length and mustache length, etc. Since the 1980 regulation was promulgated, the department began to hire female firefighters and on March 20, 1985, Chief Navaroli issued further superseding regulations dealing with personal appearance of uniformed personnel which were to take effect on March 20, 1985. In the revised general order, #85-4, of March 20, 1985, Chief Navaroli established hair styles for male members of the force and strictly required that the hair be "cut and trimmed so as to present a neat appearance" and establishing that "all hair must be unsupported and worn above the collar". The hair should also not extend over the uniform shirt collar for men. Female members of the department were allowed a greater latitude in style requiring that "hair shall be kept neat" and ordering all department personnel to avoid "off beat or extreme hair styles". Also with respect to female members of the department, the revised order required that "long hair be secured close to the head and shall not fall freely", in addition, "no style shall interfere with the wearing of the uniform hat and safety equipment".

At the hearing it became perfectly clear that previous orders did not anticipate women's hair styles in the department and that the changing order of 1985, not accompanied by diagrams, created a certain amount of confusion among the members of the department as to how these rules would apply to all members of the department equally. Questions arose as to whether the women would have to cut their hair much shorter than was their normal habit or if it was possible for males to allow their hair to grow much longer than was customary, etc.

At the hearing both sides indicated a willingness to discuss the issue further if that would help to clarify the changing general order and the PELRB was persuaded that more time should be given for this procedure.

As a result of the above, the PELRB issued a temporary cease and desist order to the City to maintain the status quo of the order dated March 2, 1980 until both sides had a chance to discuss the general order #85-4 and hopefully to clarify it to the satisfaction of all parties. PELRB also ordered the case returned to it at the end of seven days if no satisfactory resolution of the problem had occurred.

The case was returned to PELRB for further action and a hearing was held on March 28, 1985 on the unfair labor practice charge itself.

HEARING ON THE UNFAIR LABOR PRACTICE CHARGE, MARCH 28, 1985

At the hearing on the unfair labor practice charge, testimony and exhibits were received reiterating the confusion surrounding the revised general order of March 20, 1985 without the appendix of the drawn pictures of acceptable and unacceptable male hair style. Testimony was also received from the Union representative that the 1980 order had been strictly adhered to up until the time the department hired women firefighters and that since then (about 1982), these women firefighters were allowed to pin up their hair and the standards for all firefighters began to change. Union representatives further testified that they were afraid that since there were no pictures accompanying the revised regulations, that only certain employees would be singled out for enforcement of the somewhat vague and interpretable new regulation for hair style.

The City argued that everyone knew that it was alright for women under the new regulations to have longer hair, but pinned up, while men needed to have their hair cut so as not to have hair beyond the collar. The City further argued that there had been no previous negotiations with respect to hair style or appearance and that nothing of the kind was contained in the contract (which expires July 1, 1986), and that the City's right to control the appearance of the members of the department was part of management's prerogative since appearance is part of the uniform and a code of uniformity is necessary within the department.

The Union argued that the requirement of certain hair styles was an expressed condition of employment and as such must be negotiated under RSA 273-A and that therefore the City could not unilaterally adopt regulations requiring certain types of hair condition without negotiating this with the union. It also seemed apparent to the Board that both sides were in agreement that no hair style should be permitted which in any way would interfere with the operation of safety apparatus or by implication the ability to perform the firefighter tasks properly.

RULINGS OF LAW

The PELRB is not persuaded that the department has the unilateral right to issue regulations concerning hair styles without discussing and negotiating these regulations with the union representing the employees. PELRB believes that requiring a certain personal appearance is in fact a "condition of employment" under RSA 273-A and as such must be a negotiable item. However, PELRB also believes that it is management prerogative to establish the specifications and requirements for the job, including the safety procedures and safety measures and safety equipment that will be used and that insofar as any personal appearance items such as dress or hair or behavior is a part of the required specifications for the job, they would be subject to the management prerogative contained in the statute: "...the functions, programs and methods of the public employer, including the use of technology, the public employee organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions.", (RSA 273-A:1, XI) and must be applied equally to all members of the department.

DECISION AND ORDER

It is the Public Employee Labor Relations Board's decision that:

- 1) The unilateral adoption of personal hair style controls and regulations of the department without negotiating with the Union representing the members of the department is an unfair labor practice prohibited under RSA 273-A:5, I (e);
- 2) Public Employee Labor Relations Board is persuaded that the regulations and requirements of certain personal appearance items such as hair style is a matter for negotiation between the Union and the City unless the City can demonstrate that certain hair styles and certain personal appearance items interfere with the operation of the firefighter's job including, of course, any question of safety with respect to the operation of the fire department, its personnel and its equipment.

In the case of those items which are demonstrably related to job specifications and job requirements, the management of the fire department has the sole prerogative to determine those regulations. The impact of these regulations on other conditions of employment must be negotiated with the Union.

- 3) The department and the Union are at liberty to negotiate over the types of hair styles and personal appearance styles which are not related to job performance.


ROBERT E. CRAIG, CHAIRMAN

Signed this 11th day of July, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Robert Steele and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.