



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS LOCAL 464

Complainant

v.

CITY OF NASHUA, NEW HAMPSHIRE
POLICE COMMISSION

Respondent

CASE NO. P-0740:2

DECISION NO. 86-12

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BACKGROUND

This case comes before the Public Employee Labor Relations Board after a good deal of publicity. It is alleged by the complaining union that a Nashua Police Commission through its Chief of Police, Chief William Quigley and Captain Raymond Cabana discriminated against a union member, Officer Fred Williams, by denying him the right to use his lunch period for his own purposes and in a place of his own choosing, specifically, by attending a portion of a church service at his church in Nashua on certain Sundays. It is alleged that other officers were allowed to spend their lunch periods as they chose, whether at home, in restaurants, fire houses, hospital cafeterias or other locations of their choosing including attendance at their children's sporting events. The denial of Officer Williams'

choice is alleged to be because he had engaged in protected union activity. Therefore it is claimed to be discriminatory and retaliatory. In addition, it is alleged that the ruling by the police department concerning his use of his lunch hour was a unilateral change in working conditions and therefore a mandatory subject of bargaining. These two violations, it is charged, constitute unfair labor practices violating the provisions of RSA 273-A:5, I(a), (b), (c), (d), (e).

The employer responds that its action was consistent with the rules of the department which are a non-bargainable subject under the collective bargaining agreement between the parties. In addition, the employer asserts that it is inconsistent with his proper role for the officer to attend church while on duty and there is no connection between the ruling by the administration concerning Officer Williams' attendance at church, and his alleged union activities. Therefore, no unfair labor practice exists. Finally, the employer asserts that no request for bargaining over the issue was ever made and therefore the assertion of unfair labor practice because of failure to bargain cannot be sustained.

The Public Employee Labor Relations Board has considered this matter since the initial filing of the complaint on several occasions. First, after the filing on June 13, 1985, and the filing of an objection for lack of specificity, the Board requested a more specific charge which was supplied to it. On October 24, 1985, a hearing was held at the offices of the Public Employee Labor Relations Board in Concord. Representatives of the City of Nashua requested additional specificity and urged that the complaint be dismissed for lack of specificity and the inability to respond to unspecified charges which were alleged to violate

Board Rules 304.01 (a), (4), (5), (7). Subsequently, the complainant filed a three page statement of more specific charges. A full hearing was held by the Board at its offices in Concord, New Hampshire on December 5, 1985.

In addition to the objections set forth above, the employer filed a motion to recuse two PELRB members alleged to be biased in connection with this matter, members James C. Anderson and Russell Verney. The Board considered the objection as to member Verney since he appeared to hear the case on the day of hearing. Member Anderson took no part in hearing or considering the case and therefore any objection as to him was not pursued. The Board denied the motion to recuse member Verney after a statement by him that he had had no contact with nor engaged in any activities directly concerning the Nashua Police Department.

FINDINGS OF FACT

At hearing, it was established that Officer Williams has been a member of the department for three years. He is a 26 year old officer. He began his union activities in March 1984 helping circulate petitions for officers to sign in order to elect the present union. The union was selected in December 1984 and Officer Williams was involved in its activities, working with the president, Officer Sparks and the vice president, Officer Scott Childs. His union activity was known to his superiors, some of whom approached him concerning it. Captain Cabana knew of the activity. Officer Williams now serves as a shop steward and represents members in the grievance procedure. Officer Williams has had disagreements with his superiors concerning union activity, especially in connection with the termination of Officer Scott Childs whose case was considered by this Board earlier in 1985. (See Decision No. 85-41). Indeed,

Officer Williams was scheduled to testify on the Childs' case before this Board and testified in the beginning of May 1985. He knew for two months prior to that hearing that he would testify and other police officers knew he would be testifying. Captain Cabana indicated to Officer Williams that he understood Williams would testify but never indicated whether he should or should not testify.

Officer Williams is active in the First Congregational Church in Nashua, attends services regularly, and participates in church activities of various kinds. He attends services regularly except during those shifts when he has to work on Sunday mornings. In March and April 1985, the shift Officer Williams worked required working at church hour. He used his lunch period from approximately 10:25 A.M. to 10:55 A.M. to attend a portion of the Sunday morning church service during this shift. He would listen to the sermon and leave after the sermon. He parked his police cruiser nearby and left his police radio on so that he could hear calls and respond to them. He stood in the back of the church.

Testimony by Officer Williams and other officers established that officers are paid on their lunch period and must be available for duty and that officers understand this. However, it is common for officers to go home, go to restaurants, go to fire stations or hospital cafeterias, go to sporting events for their children or in other ways use the period for their own purposes. No discipline has taken place concerning the use of lunch periods. There is no systematic checking on whether police officers actually eat lunch when taking the lunch periods. Officers "call out" by radio prior to taking lunch period, give their location and, when the lunch period is over, "call in" and resume duties. The lunch period must be taken in the sector of the City where the officers perform duties or the adjacent sector.