



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON PERMANENT FIREFIGHTERS
ASSOCIATION, LOCAL 3197

Complainant

v.

CITY OF LEBANON

Respondent

CASE NO. F-01256:6

DECISION NO. 91-30

APPEARANCES

Representing Lebanon Permanent Firefighters Local 3197:

Thomas F. Hersey, Esq.

Representing City of Lebanon:

Mark T. Kremzner, Esq.

Also appearing:

Gary D. Johnson, President, Local 3197
Robert Darling, Local 3197
Douglas Chapman, Local 3197
Mark S. Bleveen, Local 3197
John Higgins, Local 3197
Clifton Cantlin, Local 3197
Stephen L. Smith, City of Lebanon
Wilfred Gutfign, Jr., Local 3197
Robert Jordan, Local 3197
Lorrie Platt, Esq.

BACKGROUND

On August 24, 1990, the Lebanon Permanent Firefighters' Association, Local 3197 filed an unfair labor practice charge against the City of Lebanon and Steven L. Smith, City Manager. The charge summarized, as follows:

- (1) The union and the City had been engaged in negotiations to achieve a successor collective bargaining agreement for the year 1990;
- (2) the parties had reached a tentative agreement during the course of negotiations;
- (3) the negotiations had reached impasse and mediation was requested by

the Union. A mediator was appointed and as a result of the mediator's actions a tentative agreement was reached;

(4) the tentative agreement which was signed in the presence of the mediator indicated that all previous tentative agreements would be honored;

(5) one of the tentative agreements reached is quoted below:

Article 29.4 - "The following incentive pay shall be added to each employee covered by this agreement, if he is eligible and shall be paid on a weekly basis.

\$.22 per hour - certified firefighter level 2;

\$.34 per hour - certified firefighter level 3;

emergency medical technician

certified company officer level 2.

The standards set forth in NH Fire Standards and Training shall apply to this section when establishing criteria for certification."

(6) the Union believed that the above section fairly represented the agreement reached during negotiations of November 22, 1989.

(7) subsequent to this tentative agreement, a second bargaining agreement was given to the union by the City Manager calling for a revision of article 29.4. Said revision contained basically the same language except that the new proposed language specifically states: "Said amounts are not additive."

(8) the union alleged that this change was made unilaterally by the City after the agreement had been completed.

(9) after the union had protested this change a final draft was submitted to the union on or about June 17, 1990 which basically contained the same language except that the following change was offered. "The following incentive pay shall be added to each employee covered by this agreement, if he is eligible and shall be paid on a weekly basis. Certified Firefighter level 3 shall not receive certified firefighter level 2 incentive pay in addition to the level set for the higher certification."

(10) the union further alleged that the proposed changes in the language of article 29.4 of the contract constituted a unilateral change in the previously agreed upon section is improper and violates RSA 273-A which requires the City to bargain in good faith.

The union requested a finding of an unfair labor practice under RSA 273-A:5 I (e), an order to the City to Cease and Desist such action, and an order to the City of Lebanon to honor and abide by Article 29.4 as drafted by the City Manager in the original instance and which reflected the agreement reached by the parties during the negotiations of November, 1989. More specifically, the Union requested a finding of unfair labor practice and an order to the City to abide by the following quoted language which states as follows:

"The following incentive pay shall be added to each employee covered by this Agreement, if he is eligible and shall be paid on a weekly basis.

\$.22 per hour - Certified Firefighter Level 2;

\$.34 per hour - Certified Firefighter Level 3;

Emergency Medical Technician

Certified Company Officer Level 2.

The standards set forth in NH Fire Standards and Training shall apply to this section when establishing criteria for certification.

The City of Lebanon by way of answer to the unfair labor practice charge stated that during the negotiations the issue of incentive pay to be awarded to firefighters in addition to their hourly wage rate had been discussed. The City denied having reached tentative agreement relative to the incentive pay called for in Article 29.4.

In addition, the City stated that the second and third draft of Article 29.4 prepared by the City was occasioned after a misunderstanding between the parties on interpretation of the amount of incentive pay to be granted to Level 2 after the conclusion of the mediation session and held subsequent to the impasse, further that near the end of the mediation session Mediator Higgins, the City Manager raised the issue of how the incentive pay provision of the agreement would be applied to certified firefighters who had obtained Level 2 and Level 3 certification.

This issue had been presented to the mediator and the Union had made certain interpretations as to the meaning of the proposed language contained in Article 29.4 in which The Union's interpretation was that when a fireman was certified as Level 2, he would receive a \$.22 per hour increase and for certification as Level 3, he would receive an additional \$.34 per hour increase making a total of \$.56 per hour. The City disagreed on that interpretation of the mediated agreement and indicated that its interpretation with respect to the language of Article 29.4 was that the \$.22 would be paid to a firefighter upon achieving Level 2 and \$.34 per hour would be added to the base rate upon reaching Level 3, the incentive pay not being additive. And, that this misinterpretation necessitated the preparation of the second and third drafts of the language.

The City further responded that because the two parties had different interpretations of the amount of the incentive pay to be granted to the Level 3 of firefighter and that no unilateral changes had in fact been made, and the fact that several drafts of Article 29.4 had to be made was indicative that the negotiations with respect to this issue had not been successfully completed.

After several attempts to schedule and several postponements, the hearing was held on December 6, 1990 at the PELRB Office in Concord, N.H.

At the hearing Attorney Hersey for the Firefighters restated the position of the Union as set forth in its complaint and indicated that the matter before the Board was one of language and interpretation of the contract, pure and simple. He offered several exhibits on the various drafts submitted in negotiations dealing directly with the subject matter of paragraph 29.4, correspondence between the mediator and the Union, and the mediator's statement to the parties on the matter of the accumulative aspect of the language contained in the Article in the old agreement which had been attentively negotiated and which to the best of his recollection had not been the subject of the mediation request.

Testimony was offered by various witnesses for the Firefighters Union, members of the negotiating team, as to the development of negotiations and the interchange of ideas and requests between the Union and the City Manager, Smith.

FINDINGS OF FACT

The only issue in this case is whether the language contained in Article 29.4 of the negotiated agreement is clear.

(1) We find that the following language:

"The following incentive pay shall be added to each employee covered by this agreement, if he is eligible and shall be paid on a weekly basis.

\$.22 per hour - Certified Firefighter, Level 2;
\$.34 per hour - Certified Firefighter, Level 3;
Emergency Medical Technician
Certified Company Officer Level 2

The standards set forth in the NH Fire Standards and Training shall apply to this section when establishing criteria for certification. Individuals will be retested biannually."

The language is silent on additives, therefore Level 2 certified firefighters are to receive \$.22 and Level 3 certified firefighters are to receive \$.34 over and above their base pay.

(2) The mediated settlement made no reference to Article 29.4 or incentive pay.

(3) The above findings are being substituted for the requests filed by Counsel for the City .

DECISION AND ORDER

Finding no unfair labor practice committed by the City of Lebanon, PELRB hereby DISMISSES the complaint Case No. F-0125:6

Signed this 28th day of May, 1991.


EDWARD J. HASELTINE, Chairman

Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting.