



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF CONCORD, NEW HAMPSHIRE	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. F-0101:21
	:	F-0130:7
LOCAL 1045, IAFF, AFL-CIO	:	
	:	
and	:	DECISION NO. 91-58
	:	
LOCAL 3195, CONCORD FIRE OFFICERS	:	
	:	
Respondent	:	

APPEARANCES

Representing City of Concord:

Terry Shumaker, Esq., Counsel

Representing Local 1045 and Local 3195:

Glenn R. Milner, Esq., Counsel

Also appearing:

Raymond C. Thurston, City of Concord
Brian Braley, Personnel Director
John M. Dionne, City of Concord
William Stetson, Local 1045
Ron Lowd, Local 3195
Harold Richardson, Local 1045

BACKGROUND

On February 14, 1991, the City of Concord (City) filed an unfair labor practice charge against Local 1045, IAFF, AFL-CIO, (Local) for wrongful demand to arbitrate a matter outside the scope of the CBA.

The Local filed two separate demands with AAA for arbitration of two grievances protesting certain changes in the City's Personnel Rules and Regulations. The City alleged that the Personnel Rules adopted by the City are not part of the CBA.

The Local, through its Counsel, filed a Motion to Dismiss stating that Article IX, Section 3.2 of the CBA specified in toto:

"3.2 The Arbitrator shall be empowered with the authority to resolve disagreements as to the arbitrability of a grievance submitted under this grievance procedure. A hearing relative to the merits of the case shall not occur on the same day as a hearing on its arbitrability except by mutual consent of the parties."

and, since the provisions of the CBA itself provided that arbitrability shall be properly determined by an arbitrator (condition absent in School District #42 v. Murray, 128 NH 417 (1986)), the Local's demand was proper.


A hearing on this matter was held on May 9, 1991 with the parties present. The parties, through Counsel, stipulated that the facts in both cases presented the same legal issue and agreed to have Case No. F-0130:7 decided based upon the ruling in Case F-0130:21.

DECISION and ORDER

As the collective bargaining agreements by and between the parties contain an article covering the power of an arbitrator and as the CBA's contain a grievance procedure ending in final and binding arbitration and since the parties to the agreements followed the process through Step 3, action by the Fire Chief, it is hereby ORDERED to proceed through to the last step, final and binding arbitration.

So ordered.

Signed this 15th day of August, 1991.


EDWARD J. HASELTINE
Chairman

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