



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS, LOCAL 524, EXETER POLICE
ASSOCIATION

Petitioner

v.

TOWN OF EXETER, NEW HAMPSHIRE and
GEORGE OLSON, In his capacity as
Town Manager

Respondents

CASE NO. P-0753:4

DECISION NO. 91-63

APPEARANCES

Representing IBPO, Local 524, Exeter Police Association:

Katherine McClure, Esq., Counsel

Representing the Town of Exeter and Town Manager George Olson:

Mark Gearreald, Esq., Counsel

Also appearing:

Stephen MacKinnon, Police Chief
George Olson, Town Manager
Paul Comeau, IBPO Local 524
David Bernard, IBPO, local 524

BACKGROUND

In April, IBPO, Local 524, Exeter Police Association (Association), through their counsel, filed unfair labor practice charges against the Town of Exeter and the Town Manager for unilaterally implementing a "Drug Free Workplace Police" and a "Drug Testing Program". (GO #3-4, and GO #5-1) which it alleges is a change in the conditions of employment thereby a mandatory subject of bargaining. As a relief for the charge, it requested an interim cease and desist order, a finding of guilty on the part of the Town, an order for the parties to hold good faith bargaining over the issues as expeditiously as possible.

The Town of Exeter and Town Manager Olson (Town) answered by stating that the Chief of Police issued the two General Orders on February 18, 1991 only after months of consideration including review by a Policy Review Committee made up of a lieutenant, a sergeant, and an officer of the Exeter Police force, including the President of IBPO Local 524 and another member;

and, that the right to issue such unilaterally orders fell within its management rights, reserved to management under either the existing agreement between the Association and the Town or the agreement currently under negotiations. In further support, the Town stated that the parties were currently operating under an agreement entered into between the Association, then affiliated with the State Employees Association of N. H., Inc., SEIU, Local 1984 and the Town. Under that agreement, Article XVIII set forth a grievance procedure which must be followed by the parties in resolving any grievance arising from the interpretation or application of any of its provisions and that the general orders were issued in accordance with the management rights clause under that agreement (Article IV) to establish reasonable work rules, etc.

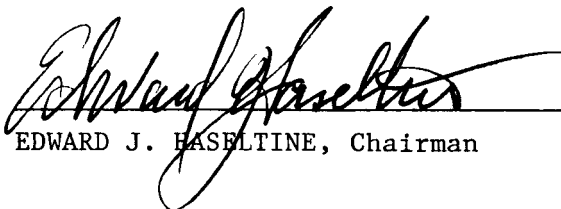
A hearing in this case was held in the Board's office in Concord on July 16, 1991 with all parties represented.

DECISION AND ORDER

After hearing evidence, both written and oral, from the parties, Board Member Richard W. Roulx Moved to Dismiss the unfair labor practice charge filed by the Association, IBPO, Local 524, on the Drug Free Workplace Order #GO #3-4 as issued by the Exeter Police Department.

Board Member Richard E. Molan, Esq. Moved to Grant the Motion to Dismiss with respect to the Drug Testing Program, GO #5-1 with the understanding that the issue be remanded to the grievance procedure without prejudice and that "without prejudice" in this instance means that no other party should read into this decision that the Board has in any way decided upon the correctness of the positions of the parties.

Issue is thereby remanded to the grievance procedure as expeditiously as possible.


EDWARD J. HASELTINE, Chairman

Signed this 3rd day of September, 1991.

By unanimous vote of the Board. Chairman Edward J. Haseltine presiding. Members Richard W. Roulx and Richard E. Molan, Esq., present and voting.