



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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UNITED STEELWORKERS OF AMERICA, :  
LOCAL 8938 :

Complainant :

v. :

CITY OF MANCHESTER/MANCHESTER :  
WATER WORKS :

Respondent :

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CASE NO. M-0545:12

DECISION NO. 93-37

### APPEARANCES

Representing United Steelworkers of America:

Vincent Weners, Esq., Counsel

Representing City of Manchester Water Works:

David Hodgen, Chief Negotiator

Also appearing:

Michael D. Roche, U.S.W.A.

Michael Olmstead, U.S.W.A.

Arthur Blair, City of Manchester

Robert Beaurivage, City of Manchester

### BACKGROUND

United Steelworkers of America, Local 8938 (Union) filed unfair labor practice (ULP) charges against the City of Manchester, Manchester Water Works (City) on August 13, 1992 alleging violations of RSA 273-A:5 I (a), (e), (h) and (i) related to bad faith bargaining when the City allegedly awarded non-affiliated employees benefits which the Union was seeking through bargaining. The City filed its answer on August 28, 1993. This matter was heard by the undersigned Hearing Officer on December 22, 1992.

FINDINGS OF FACT

1. The City of Manchester through its Water Works Department, is a "public employer" as defined by RSA 273-A:1 X.
2. United Steelworkers of America, Local 8938 is the duly certified bargaining agent for certain personnel employed by the City of Manchester, Manchester Water Works.
3. The parties have a collective bargaining agreement (CBA) which was in effect from January 1, 1989 through December 31, 1991 and continued from year to year thereafter unless written notice to cancel is given (Article 37). Article 12.9 of the CBA provides that "any unscheduled work of an emergency nature performed on a holiday shall be paid at the rate of double the regular hourly rate of pay." This benefit dates to 1984.
4. The City's summary of benefits for non-affiliated employees from 1/1/89 through 12/31/91 (Union Exhibit No. 2) shows only double time after sixteen consecutive hours. It makes no provision for double time to be paid for unscheduled work on holidays.
5. Double time compensation has been paid to supervisory (non-affiliated) employees of Manchester Water Works since 1986, according to unrebutted testimony from City witnesses Beaurivage and Blair.
6. By memos of February 2, 1992 and May 19, 1992, Local 8938 President Michael Roche inquired of management (Messrs Kittredge and Tessier) respectively) about the double time payment policy for non-affiliated employees. By June 19, 1992, the City had rejected this as an agenda item for further discussion.

DECISION AND ORDER

The Union has alleged that the City, through Manchester Water Works, began paying non-affiliated employees double time for unscheduled overtime work on a holiday, that this was not discussed with the union, and that it is representative of bad faith negotiations because it interferes with the Union's relationship with its members. In substantiation of this allegation the Union's only witness testified that this practice has had a detrimental effect on the spirit and morale of unit employees. This is insufficient for a finding of a ULP since there is no proof of an improper motive associated with the double time payments or any breach of contract associated with that practice.

As certified bargaining representative for unit employees, the Union is in no position to speak on behalf of the non-affiliated employees. The City's compensation of non-affiliated employees is beyond the scope of the labor management relationship between the City and the Union. Without a showing that the City's double time compensation policy somehow violates the provisions of RSA 273-A:5 I, there can be no finding of ULP. That showing simply does not exist in this case. Finally, even if one were to assume the complained-of conduct is violative of some portion of RSA 273-A:5 I, nowhere in the complaint is there to be found an allegation that that complained-of conduct occurred within six months of the filing of the complaint.

The ULP is DISMISSED.

So ordered.

Signed this 30th day of March, 1993.

  
EDWARD J. HASELTINE  
Hearing Officer