



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF	:	
POLICE OFFICERS, LOCAL 480 FOR	:	
LEBANON POLICE OFFICERS	:	
	:	
Complainant	:	CASE NO. P-0708:4
	:	
v.	:	DECISION NO. 97-096
	:	
CITY OF LEBANON	:	
	:	
Respondent	:	

APPEARANCES

Representing International Brotherhood of Police Officers:

Peter Phillips, Esq.

Representing City of Lebanon:

Robert Leslie, Esq.

Also appearing:

Edward A. Laurie, Lebanon Police
Randall L. Chapman, Lebanon Police
Andrew A. F. Langley, IBPO Local 480

BACKGROUND

The International Brotherhood of Police Officers, (IBPO), Local 480 (Union) behalf of certain police officers employed by the City of Lebanon (City) filed unfair labor practice (ULP) charges against the City on April 15, 1997 alleging violations of RSA 273-A:5 I (a), (e), (g) and (i) resulting from the unilateral

imposition of a change in working conditions (implementation of a light duty policy) and refusal to bargain. The City filed its answer on April 29, 1997. This matter was heard by the PELRB on September 16, 1997 after continuances sought by the parties for the months of July and August.

FINDINGS OF FACT

1. The City of Lebanon is a "public employer" of personnel employed by its Police Department within the meaning of RSA 273-A:1 X.
2. The International Brotherhood of Police Officers, Local 480, is the duly certified bargaining agent for police officers employed by the City.
3. The City and the Union are parties to an expired collective bargaining agreement (CBA) whose terms apply under the *status quo* doctrine while they attempt to negotiate successor agreement. The expired agreement did not address light duty and there is no evidence that there is any written departmental policy on light duty, i.e., when it may be implemented, by whom and under what circumstances.
4. On November 15, 1996, Captain Randall Chapman sent a memo to all department personnel which circulated a draft policy on temporary alternate duty assignments and solicited suggestions or comments on or before November 22nd. Union Exhibit No. 1. According to unrebutted testimony from both Chapman and Chief Edward Laurie, this document was never signed and never implemented.
5. On November 18, 1996, Donny Dailey, IBPO National Representative, wrote Laurie saying that he was aware of a draft temporary alternate duty assignment plan being "proposed to the Lebanon patrolmen," that this was a change in working conditions and that the Union wanted to "bargain in good faith prior to the implementation of this proposal." Union Exhibit No. 2.
6. Between November 18, 1996 and when Officer Steve

Otis went on "light duty" in December of 1996, the Union received no response from the City to its request to bargain the issue of light duty assignments.

7. The City asserted, and it was unrefuted, that Otis, who was on workers compensation at the time, requested to return in a "light duty" status. The City also represented that it checked with Otis's doctor and received his permission before Otis was permitted to return. By returning from workers compensation to "light duty" status, Otis improved his rate of compensation from the 66% rate permitted under the workers compensation plan to 100% of his regular full time compensation with the police department, exclusive of any overtime or detail opportunities. While on "light duty," Otis was assigned to work in the police department training section.
8. The history presented to us shows that light duty has been used infrequently over the past twelve years. According to testimony from Chapman, departmental usage of light duty, prior to Otis, dates to Officer Silvia's use in 1989 and his (Chapman's) own use in 1985-86. Laurie, who has been with the department for 22 years, recalls being on light duty, working the desk, when he was a patrolman. Conversely, Patrolman Andrew Langley, testifying for the Union, said he was denied light duty after a non-line of duty injury which he sustained in 1995. Langley testified that Officer Spencer Marvin was also denied light duty after a non-line of duty knee injury. When Otis was put on light duty, Langley was surprised because, according to his experience and that of Marvin, he did not know it was available.

DECISION AND BACKGROUND

Having weighed the evidence and heard the testimony, we reject the Union's assertions that there has been a unilateral change in working conditions. It appears that "light duty," whether known by this or another terminology, has been used in the department for more than a dozen years, depending on the individualized circumstances of each case. We were presented with no evidence of an impermissible reason why light duty was

denied to Langley and Marvin and, therefore, conclude there was none.

The Union would have us find an obligation to bargain the alleged change under IBPO v. Town of Exeter, Decision No. 93-77 (June 23, 1993). If we were to have found a unilateral change in working conditions, this value of Exeter, supra, would still be questionable because it involved circumstances where the change resulted "in a diminution of benefits." Here, employees moved from 66% compensation under workers compensation to 100% of their regular (non-overtime, non-extra duty) compensation. Also, the record in Exeter (Finding No. 7 in Decision 93-77) showed a formal adoption of such a policy on August 5, 1992. Just the opposite is true here; the draft policy was never adopted.

The unfair labor practice is DISMISSED.

So ordered.

Signed this 24th day of OCTOBER, 1997.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard Molan and William Kidder present and voting.