



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

I.B.P.O., LOCAL 466	:	
	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. P-0747:6
	:	
CITY OF DOVER	:	DECISION NO. 1998-044
	:	
	:	
Respondent	:	

APPEARANCES

Representing I.B.P.O., Local 466:

Peter Phillips, Esq.

Representing City of Dover:

Mark T. Broth, Esq.

Also appearing:

William Fenniman, Chief, Dover Police
Bill Dalton, I.B.P.O., Local 466
Karen Levesque, Dover Police, Local 466
Chris Costello, Dover Police, Local 466
Jeff Jacques, Dover Police

BACKGROUND

The International Brotherhood of Police Officers, Local 466, filed unfair labor practices charges on January 28, 1998, alleging violations of RSA 273-A:5 I (e), (g), (h) and (i) charging breach of contract for failing to implement an arbitrator's decision. The City filed its answer on February 17,

1998. A hearing was held before the undersigned hearing officer on March 26, 1998.

FINDINGS OF FACT

1. The City of Dover, hereinafter City, employs police officers and others to operate the Dover Police Department and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. International Brotherhood of Police Officers, Local 466, hereinafter Union, is the duly certified bargaining representative for police officers and other positions within the Dover Police Department.
3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period, July 1, 1993, through June 30, 1996. (Joint Exhibit No. 1). The grievance procedure therein, Article II, Section 4, calls for final and binding arbitration.
4. Article XII 1 defines overtime as authorized work performed in excess of the regular workday or workweek. The workweek is construed to be 41 1/4 hours. Article XII 2 states that overtime shall be compensated at time and one-half the employee's hourly rate.
5. In 1995, during the term of the present CBA, the Dover Police Department changed from permanent shifts to rotating shifts for their police officers. The change was the subject of an action for failure to bargain in which the City prevailed. PELRB Decision No. 1995-072.
6. In September 1996, the Union filed a grievance alleging violation of the Article XII of the CBA, for failure to pay overtime when Officers Costello, Levesque and others rotated from an 11:00 p.m. to 7:15 a.m. shift to a 3:00 p.m. to 11:15 p.m. shift, thus working two shifts in a twenty-four hour period.
7. The grievance was processed. Arbitrator James Cooper issued a decision on August 25, 1997. In pertinent part, he found that, "...the City violated Article

XII of the Agreement when it denied Officers Costello and Levesque 7 1/4 hours each of overtime pay for their work on September 1, 1996." Arbitrator Cooper ordered that the two officers and any other bargaining unit member similarly situated be made whole for their loss of overtime on that date. (Joint Exhibit No. 2).

8. On September 18, 1997, Chief James Fenniman issued a memorandum explaining that Arbitrator Cooper's order required that those effected be paid the sum equal to the one-half portion of time and one-half, the contractual method of paying overtime. See Finding No. 3. Officer Levesque was not paid this amount because she took annual leave on September 1, 1996.
9. Wage and hour records support the conclusion that Officers Costello and Levesque were paid for 41 1/4 hours or five shifts during the week, August 25 through August 31, 1998, and for 41 1/4 hours or five shifts during the week, September 1 through September 7, 1998. (Joint Exhibit No. 4, City Exhibits Nos. 1 and 2).
10. Arbitrator Cooper determined, as the Officers Costello and Levesque averred before this forum, that the officers were paid for ten shifts but worked eleven shifts over the two pay weeks in question. He concluded that the September 1 transition shift to the new schedule, the second shift worked within twenty-four hours, was not paid and that the second of the two weeks in question was a 48 1/2 hour week.

DECISION AND ORDER

The City argues that it has paid for all shifts worked and so has complied with the Arbitrator's decision by paying the equivalent of one-half time over base pay to all entitled. The City's interpretation of Arbitrator Cooper's decision is in error. The arbitrator determined that one shift worked remained unpaid and he determined that the extra shift constituted an overtime shift and so ordered payment at the overtime rate.

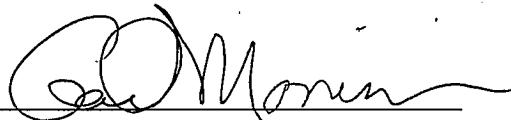
Much testimony and much of the arbitrator's decision dwells on when the workweek is to begin and end. The change to a week

beginning at 12:00 midnight on Sunday is a separate issue and a red herring making the arbitrator's decision confusing.

The confusion over interpretation of Arbitrator Cooper's award was genuine and does not constitute an unfair labor practice on the part of the City. The City shall pay Officer Costello for one shift of 7 1/4 hours his 1996 hourly rate and the City shall pay Officer Levesque for one shift of 7 1/4 hours at time and one-half her 1996 hourly rate. The City shall likewise pay all other officers who are similarly situated for 7 1/4 hours work at their 1996 base rate in order to comply with the final and binding arbitration award of August 25, 1997.

So ordered.

Signed this 30th day of April, 1998.



Gail C. Morrison
Hearing Officer