



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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NEW HAMPSHIRE TROOPERS ASSOCIATION	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. P-0754:6
	:	
DEPARTMENT OF SAFETY, DIVISION OF	:	DECISION NO. 1998-070
STATE POLICE	:	
Respondent	:	
	:	

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APPEARANCES

Representing New Hampshire Troopers Association:

James Donchess, Esq.

Representing Department of Safety:

Thomas Manning, Manager of Employee Relations

Also appearing:

Herbert Frink, New Hampshire Troopers Association  
Kevin O'Brien, State of New Hampshire

BACKGROUND

On June 2, 1998, the New Hampshire Troopers Association (Association) filed unfair labor practice charges against the New Hampshire Department of Safety, Division of State Police (State) alleging violations of RSA 273-A:5 I (h), for breach of the collective bargaining agreement (CBA), and (i), for formulating a rule contrary to the CBA. On June 17, 1998, the State filed its answer. The Association filed a Motion for Judgment on the Pleadings on June 29, 1998, to which the State objected on July

7, 1998. A hearing was held on August 13, 1998. The Troopers waived a ruling on the Motion for Judgment on the Pleadings and the parties proceeded to present evidence on the merits of the charges.

FINDINGS OF FACT

1. The New Hampshire Department of Safety, Division of State Police employs troopers and other personnel to conduct its operations and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. The New Hampshire Troopers Association is the duly certified exclusive bargaining representative for uniformed law enforcement officers employed by the Division of State Police.
3. The State and the Association are parties to a collective bargaining agreement (CBA). The text of Article 7.6 of the CBA is relevant to this case (Trooper Exhibit No. 6). Article 7.6 reads:

Any employee who is not on duty and is required by the Employer to appear in court or at an administrative hearing on behalf of the Employer shall be compensated for all hours worked at time and one-half the regular rate and shall be guaranteed a minimum of four (4) hours compensation. The employee shall be paid portal to portal. Witness fees paid to employees under these circumstances shall become the property of the Employer. Court/administrative hearings for employees who are not on duty shall only be compensated with a four (4) hour minimum when the minimum does not cover on duty hours.

4. Captain Kevin O'Brien has been with the Division for almost twenty-six years. His duties involve personnel matters. He testified that Article 7.6, has been included in the CBA for at least eight or ten years and that it is meant to cover criminal cases, in which the employer calls a trooper as a witness. It is common for a civil claim to arise from the same facts that led to a criminal charge. An officer who is subpoenaed to testify in a civil

matter arising from his work, receives only a witness fee and mileage payment from the party issuing the subpoena.

5. On November 19, 1997, Trooper Herbert Frink of Troop C in Cheshire County was at home for his evening meal, he received a call from the state police dispatcher ordering him to investigate a domestic dispute at a home in Surry. He and two other troopers went to the home, found evidence of violence and made an arrest.
6. Trooper Frink received a telephone call from the injured party's attorney informing him that a restraining order was being sought and that he would be subpoenaed to testify regarding the incident of domestic violence he observed on November 19, 1997. The hearing on the petition took place on December 3, 1997, Trooper Frink was given the subpoena in hand that day. He received a check in the amount of \$30.00 the witness fee. He attested that he had intended to sign the check over to his employer when he received payment for the minimum four hours paid for court appearance (Trooper Exhibit No. 6). Later, he made out his time sheet (Trooper Exhibit No. 4) and he filed a form certifying he had made an off-duty court appearance on December 3, 1997.
7. The Division of State Police, has denied him payment for the court appearance on December 3, 1997, despite the subpoena requiring him to appear to testify as to the events that happened while he was performing duties directed by his employer.
8. Evidence includes copies of sections 1.1.0-1.3.1 of the Troopers' Professional Standards of Conduct (Trooper Exhibit No. 7), RSA 516:1-7 regarding subpoenas (Trooper Exhibit No. 3) and RSA Chapter 173-B that deals with domestic violence (Trooper Exhibit No. 1). These three documents were introduced for the purpose of illustrating the mandatory nature of both Trooper Frink's answering the domestic violence call on November 19, 1997 and his responding to the subpoena on December

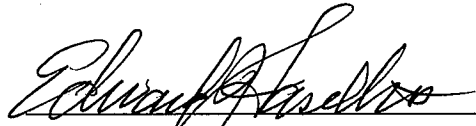
3, 1997 resulting from this work assignment.

DECISION AND ORDER

Both the Troopers Association and the State rely on Article 7.6 of the collective bargaining agreement to support their opposite positions (See Finding No. 2). Based on the facts and evidence in this particular case, we conclude that Trooper Frink was required to respond to the subpoena as a follow on to the assigned domestic violence case to which he was directed by State Police dispatchers on November 19, 1997. Accordingly, we order the State Police to pay Trooper Frink wages and mileage in accordance with Article 7.6 of the CBA. This payment is a valid employer requirement under the contract in the circumstances of this case and represents the total remedy which is directed.

So ordered.

Signed this 11th day of September, 1998.

  
EDWARD J. HASELTINE  
Chairman

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