



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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TOWN OF HAMPTON	:	
	:	
Petitioner	:	
	:	
v.	:	CASE NO. P-0719:15
	:	
HAMPTON POLICE ASSOCIATION	:	DECISION NO. 1998-095
	:	
Respondent	:	
_____	:	

APPEARANCES

Representing Town of Hampton:

Renny Perry, Consultant

Representing Hampton Police Association:

J. Joseph McKittrick, Esq.

Also appearing:

William Wrenn, Chief, Hampton Police Department
Steven Henderson, Hampton, Police Association
John Galvin, Hampton Police Association
John Joyce, Hampton Police Association

BACKGROUND

On July 29, 1998, the Town of Hampton filed an unfair labor practice charge pursuant to RSA 273-A:5 II (f) for a wrongful demand to arbitrate. On August 13, 1998, the Hampton Police Association answered the charge with its objections. A hearing was scheduled for September 23, 1998, and continued to October 5, 1998, at which time the matter was heard before the undersigned hearing officer. The record of evidence was closed and the Association's brief was submitted at the conclusion of the hearing. Leave was granted for the Association to comment on certain evidence and for the submission of a brief by the Town. The Town's brief was received two weeks thereafter on October 19, 1998. The Association's Supplemental Memorandum of Law was received on October 20, 1998.

FINDINGS OF FACT

1. The Town of Hampton (Town) employs various personnel including police officers to carry out the business of the Town and so is a "public employer" within the meaning of RSA 273-A:1 X. Fully staffed, the Town employs thirty-two full-time and seventy part-time officers. The latter are also known as special officers.
2. The Hampton Police Association (Association) was "grandfathered in" as the bargaining agent for police officers employed by the Town and has represented police personnel, including special or part-time officers, since 1974. The Town and the Association are parties to a collective bargaining agreement for the period, April 1, 1998, through April 1, 2000.
3. Each year, new part-time officers have been hired by the Town to fill vacancies. They have been sworn in and provided with the mandatory Department of Safety training program leading to state certification as part-time officers. Since at least 1985 through 1997, those in the certification program have been paid wages at an hourly rate equivalent to the contractual starting wage for officers during the time they attended the training program. The Town made withholdings for Social Security and other taxes and issued W2 forms to these officers for the weeks of their training. Special officers were considered employees for workers' compensation purposes during training.
4. In 1997, as in other years, provision was made for the special officers' training period pay in the Town budget prepared in September. The budget, including the trainees' pay, was voted at Town Meeting in March. However, the members of the 1998 class of special officers were not paid for the training time but were required to sign a waiver in the form of a letter of understanding. (Town Exhibit No. 2).
5. On March 25, 1998, after the swearing in required by the State before training, each member of the class of special officers was presented with a letter of understanding to sign as a pre-requisite to the

certification training. The document required acknowledgment that each understood that his/her swearing in was for training purposes, that employment would only begin upon notification after successful completion of the training program and that each would not be compensated for the time devoted to training. (Town Exhibit No. 2).

6. Chief William Wrenn testified that twenty new officers were hired this year, two of whom were already certified. Eighteen recruits completed their training and were certified, fifteen of whom became police officers with the Town of Hampton. Three of the trainees took full-time police employment for other towns. Of the group of eighteen, none was refused a position with the Town. Indeed, between 1985 and 1997, only one officer-trainee was "let go." Chief Wrenn testified that trainees knew that if they successfully completed the program, they could remain with the Hampton Police Department.
7. Chief Wrenn testified that the required signing of the letter of understanding was the only change in the long established procedures for adding new officers to the part-time roster. He averred that the decision to make this change was instigated by a 1997 Superior Court decision that approved an unpaid police recruitment training program used in the Town of Bedford, Bedford v. New Hampshire Department of Labor, Hills. No. Super Ct., No. 96-E-0330. (Town Exhibit No. 1). The decision was a reversal of a New Hampshire Department of Labor decision holding that Bedford's police trainees were employees. Chief Wrenn learned of that decision last fall after the beginning of the budget process. There was no formal vote on this change though the subject was raised as a cost saving measure at a Selectmen's meeting.
8. The question of whether the Town acted improperly when it changed its practice of compensating special officers in training was submitted to the American Arbitration Association on July 22, 1998, following which this unfair labor practice charge was filed.

DECISION AND ORDER

The question underlying the unfair labor practice charge filed by the Town is whether the subject matter of the grievance filed by the Association is arbitrable under the collective bargaining agreement.

The determination of arbitrability rests with the PELRB when the collective bargaining agreement calls for arbitration but does not assign that particular decision to the arbitrator. School District #42 of Nashua v. Michael Murray, 128 N.H. 417, 419 (1986). In this case, no designation is made.

The subject matter referred to arbitration is the Town's change in practice following its decision to no longer pay wages to new part-time police officer trainees during State required certification training. The Association portrays this as a wage issue affecting special or part-time officers who long have been represented by the Association, the "grandfathered" bargaining agent, despite the limitations of RSA 273-A:1 IX (d) excluding seasonal and probationary employees from definition of "public employee." Indeed, the Public Employee Labor Relations Act, RSA Chapter 273-A, was enacted in 1975, a year after the Association was established. The Association and the Town are in agreement that the Association may represent probationary and seasonal employees as it has always done. The Town has argued, however, that there can be no representation by the Association under the collective bargaining agreement since this year's class of special officers in training does not meet the definition of "public employee" because they are not employees at all but are volunteers. The Town cites Title 29 of the United States Code, the Fair Labor Standards Act, (Town Exhibit No. 3) as authority for the purpose of defining what constitutes an employee. The Association cites, among other authorities, the New Hampshire Workers' Compensation law, RSA Chapter 281-A, as reason for finding that the special officers must be treated as employees who may grieve under the collective bargaining agreement.

There are numerous statutory definitions of "employee," including those cited by the parties, but there is no need to engage in competing definitions. For the purposes of determining arbitrability under Chapter 273-A, the signed letter of understanding controls as to the nature of the relationship that existed during the training period. The signatories understood that they were not employed by the Town of Hampton, that their swearing in was for training purposes and that they were to perform no police work during training. It is noted that in Hampton, as in many other communities, the hiring process for police officers is multi-conditional and is accomplished in stages. In 1998, the signing of the letter of understanding and the completion of certification training were added as pre-employment conditions for part-time police officer candidates in Hampton.

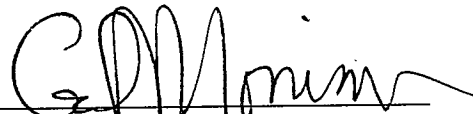
This decision to withhold to compensation from special officers in training can be described as regressive but it is within the rights of management to decide when new hires are to begin their employment. Such a decision is an aspect of the selection process reserved to management under RSA 273-A:1 XI, so implicating the first prong of the test in Appeal of State, 130 N.H. 716, 722 (1994). This amendment to

the selection process is not properly before an arbitrator for that reason. It follows that the decision to decline to provide training pay to these future employees of Hampton and other towns is not properly before the arbitrator for jurisdictional reasons. Non-employees have no right to redress under the CBA.

Thus, the Hampton Police Association violated the prohibition of RSA 273-A:5 II (f) by attempting to arbitrate a matter not subject to arbitration. The Association shall cease and desist from attempting to arbitrate this pre-employment matter.

So ordered.

Signed this 18th day of November, 1998.



Gail C. Morrison
Hearing Officer