



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NASHUA POLICE PATROLMAN'S	:	
ASSOCIATION	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. P-0740:10
	:	
CITY OF NASHUA,	:	DECISION NO. 2000-21
POLICE DEPARTMENT	:	
	:	
Respondent	:	

APPEARANCES

Representing Nashua Police Patrolman's Association:

James Donchess, Esq.

Representing City of Nashua:

Dorothy Clarke, Esq.

Also appearing:

- Susan Jeffery, Nashua Police Department
- Michele Guilbeault, Nashua Police Department
- Carol Desrosiers, Nashua Police Department
- Donald Gross, Nashua Police Department
- Philip Costa, Nashua Police Patrolmen's Association
- Anthony Pivero, Nashua Police Patrolmen's Association

BACKGROUND

The Nashua Police Patrolman's Association (Union) filed unfair labor practice (ULP) charges on October 15, 1999 against the City of Nashua (City) Police Department (Department) alleging violations of RSA 273-A:5 I (e), (h) and (i) resulting breach of contract and refusal to bargain when the Department refused to permit a bargaining unit member to accrue sick leave and vacation while he was on injured

leave as the result of an off-duty accident. The City filed an answer and a Motion to Dismiss on November 1, 1999. This matter was then heard by the PELRB on February 1, 2000 after an intervening continuance sought by and granted to the parties.

FINDINGS OF FACT

1. The City of Nashua, by and through the Nashua Police Commission, operates a police department and, in so doing, is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Nashua Police Patrolman's Association is the duly certified bargaining agent for sworn full-time non-probationary officers of the Nashua Police Department below the rank of sergeant.
3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1998 through June 30, 2002. (Joint Exhibit No. 1.) That agreement contains provisions relating to the accrual of sick leave and vacation leave, to wit:

Article 12 - Vacations:

Employees are entitled to the following vacation time:

- 10 Workdays (.83333 Accrual Rate) After One Year continuous service;
- 15 Workdays (1.25 Accrual Rate) After Five Years continuous service;
- 20 Workdays (1.6666 Accrual Rate) After Ten Years continuous service;
- 25 Workdays (2.083 Accrual Rate) After Seventeen (17) Years continuous Service.

Vacations will be chosen according to seniority. The number of employees allowed on vacation at one time shall be determined by the Chief or his designee and shall not be affected by the availability of any civilians.

* * * * *

Accrual Limits/Restrictions:

Vacation time accrued but not used, up to a maximum of 20 days, shall be paid in a lump sum when the employee is no longer a member of the department.

Unused vacation time, up to a maximum of 20 days, shall be paid in a lump sum to the employee's estate if death occurs while employed by the department.

Article 17 - Sick Leave:

The Chief's designee for the purposes of this Article shall be the Bureau Commander or Divisional Supervisor.

Accrual Rate:

Employees shall be allowed to accrue an unlimited amount of sick hours. Sick leave shall be accrued at the rate of 10 hours per month, a total of 120 hours, in any calendar year. If sick time taken exceeds 120 hours in any calendar year and prior accrued sick leave is available, it may be used for that illness upon approval of the Chief.

* * * * *

Article 34 -- Long Term Disability:

Employees covered by this Agreement are eligible for coverage under the City's Long-Term Disability Plan after completion of three (3) years of continuous, full-time service and after 45 continuous days of absence due to a non-job-related illness/injury. This benefit is subject to federal income tax and covers only non-job-related illnesses/injuries. There shall be no cost to the employee for this benefit.

After 45 continuous days of illness/injury, the City will pay 70% of an employee's regular straight-time pay, but not more than \$3,000 per month, for not more than two (2) years. This disability income would be reduced by any social security or retirement disability payments that the employee receives, and it ends upon the employee's retirement.

The plan does not cover disability resulting from war, nuclear explosion/incident, insurrection, rebellion, participation in a riot, self-inflicted injuries, attempted suicide, or natural disaster. (A more detailed description of the Plan will be provided to the employee upon becoming eligible for this coverage.)

4. Patrolman Phillip Costa, a member of the bargaining unit and covered by the CBA, is employed as a sworn police officer by the City of Nashua/Nashua Police Commission. He was out of work from January 3, 1999 to June 6, 1999 as the result of injuries he sustained in an automobile injury while he was off duty. The Department did not permit Costa to accrue sick time and vacation time during his leave of absence caused by his non-line-of-duty injuries. Thereafter, Costa grieved this denial of benefits accrual up through and including the Nashua Police Commission, as provided under Step 4 of the grievance procedure which is found at Article 10 of the CBA. His Step 4 grievance was denied by the Nashua Police Commission on September 2, 1999 (Union Exhibit No. 1) based on two particular issues. First, the issue of accrual policies is not addressed by the CBA when an officer is out on an unpaid leave of absence. Second, absent such a contract provision, the Department's policy and precedents thereunder dating to 1992 do not support Costa's request for the sick leave and vacation leave accruals.

5. Costa testified that his absence from duty caused him to utilize all of his accrued vacation leave and all but one week of his accrued sick leave, after which long-term benefits under Article 34 of the CBA (Finding No. 3, above) became effective. Costa did not receive additional details on this coverage until he became eligible for it, pursuant to the procedure suggested in the last sentence of the last paragraph of Article 34. That coverage is explained in a Department policy memorandum, the fourth paragraph of which covered Costa's long term disability situation (City Exhibit No. 1), dated August 6, 1992, and provides in pertinent part:

2. UNPAID SICK LEAVE: If a member/union civilian is out sick, does not have any sick/vacation accruals available, and is not paid for most of the month, he/she will not accrue sick/vacation leave for that month. A memo will be initiated and sent to the Human Resource Department for deduction purposes in the City's computer file. (Example: Joanne Langis - Did not accrue while out sick, but not paid, due her personal illness.)

3. LEAVE OF ABSENCE WITH NO PAY: If a member is out on a leave of absence without pay for most of the month, he/she will not accrue sick/vacation leave for

that month. A memo will be initiated and sent to the Human Resource Department for deduction purposes in the City's computer file. (Example: John Wilkinson - Did not accrue while out due to personal illness, but not paid.)

4. LONG-TERM DISABILITY: If a member/union civilian is out due to LTD, he/she will not accrue sick or vacation leave during the time he/she is on LTD. A memo will be initiated and sent to the Human Resource Department for deduction purposes in the City's computer file when the member comes back. The union civilian's deductions should automatically stop. (Example: John Wilkinson, Betty Walver, Joanne Langis - All did not accrue sick/vacation leave while on LTD.)

The CBA has been renegotiated at least twice since the aforesaid policy was adopted by the Department. There is no evidence before us that changes in that policy were the subject of negotiations or that such changes have been incorporated into this or previous CBA's.

6. Susan Jeffery supervises the Risk Management Department for the City. She explained that the City's long-term disability program, which covers City and school department employees, is self-funded and designed to pay eligible recipients 70% of their pay when they are disabled by non-work related disabilities. Such was the case with Costa who was not a three year employee for eligibility purposes until January of 1999. Due to the intervention of Deputy Chief Don Gross, the Risk Management Department was convinced to cover Costa's situation because he would reach and exceed his three year anniversary during that period of time when his disability would cause him to be absent from work. Jeffrey also explained that once an employee is eligible for these long-term disability benefits, he or she is transferred from his or her operational City department and becomes an "employee," on paper, of the Risk Management Department. Both historically and as the result of this transfer, vacation accruals and sick leave accruals stop once the individual becomes an "employee" of the Risk Management Department.

DECISION AND ORDER

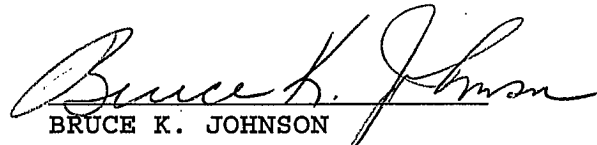
The City's Motion to Dismiss is predicated on an alleged infirmity in the Union's bringing of this ULP, namely, that the Union is compelled by the CBA to pursue a grievance, already processed through the first four steps of the grievance procedure, to the fifth and final step of that procedure in the form of arbitration. Notwithstanding the language of Article 10, Step 5 of the CBA, the City, in its answer, asserts that the only role contemplated for the PELRB in such a situation is as the administrator of the final step in the arbitration process. As noted in Decision No. 2000-20 involving the same parties, we believe such an interpretation to be contrary to the "plain language" of the contract and reject the City's assertion. The City's Motion to Dismiss is DENIED.

As for the ULP, we can find no basis in contract, in past practice or in a yet-to-be-discovered demand to bargain relative to why Costa, as a claimant or grievant, should be entitled to accrue sick leave or vacation leave under the circumstances of this case. There is no evidence that the City's policy, dating to August of 1992, has been applied differently to Costa than to other eligible recipients. Likewise, there is no evidence that this policy was in any way secret, covert or beyond the knowledge of the Union. The very language of the CBA suggested that detailed information about benefits under the long-term disability coverage would be given to an employee upon becoming eligible for this coverage. The Union put its imprimatur on this language when it ratified and signed the CBA. It cannot now be heard to say it was uninformed of a contract provision which it approved.

The unfair labor practice complaint is DISMISSED.

So ordered.

Signed this 8th day of March, 2000.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding.
Members Seymour Osman and E. Vincent Hall present and voting.