

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**MANCHESTER POLICE PATROLMAN'S
ASSOCIATION**

Petitioner

and

**CITY OF MANCHESTER
MANCHESTER POLICE DEPARTMENT**

Respondent

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CASE NO. P-0706-32

DECISION NO. 2000-096

REPRESENTATIVES

For the Complainant: Edward J. Kelley, President,
Manchester Police Patrolman's Association

For the Respondent: Mark T. Broth, Esq.

BACKGROUND

The Manchester Police Patrolman's Association, ("Association"), a duly certified exclusive representative of certain police officers and other employees of the Manchester Police Department within the meaning of RSA 273-A:1, filed unfair labor practice ("ULP") charges on April 4, 2000 pursuant to RSA 273-A:5 I (a), (b), and (h) alleging that the City of Manchester ("City"), a public employer within the meaning of RSA 273-A:1, its Police Department and its agents interfered with the existence and operation of the Association by imposing discipline upon Association's president who authored an editorial in a union publication, compelling officers to reveal contents of a union meeting and breaching the parties' Collective Bargaining Agreement (CBA), signed November 14, 1997, by failing and refusing to adhere to the cost remedy contained within Article 7 of that CBA.

The parties had, previous to the Association's ULP filing, presented their substantive issues and arguments through their participation in the agreed to grievance procedure found in their collective bargaining agreement. This process culminated in arbitration of the underlying material issues that are now presented before the PELRB. Following the conduct of a comprehensive evidentiary hearing and full legal briefing by the parties, an Arbitration Award and Decision was issued on October 4, 1999.

Pursuant to a Pre-Hearing Conference Memorandum and Order, dated July 10, 2000 the record in this instant matter was closed on August 25, 2000 with the parties having agreed, *inter alia*, that the City's Motion to Dismiss could be considered by the board on pleadings submitted and memoranda of law provided by the respective parties without oral argument.

DECISION AND ORDER

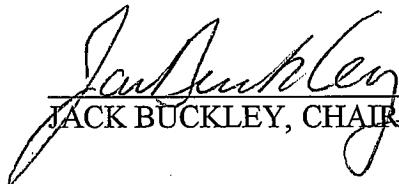
The Board, meeting at its offices in Concord, New Hampshire on September 14, 2000, convened for the purpose of considering the City's Motion to Dismiss and for Entry of Scheduling Order and took the following actions:

1. It reviewed the record before it, including: the Association's ULP complaint; the City's Answer; the City's Motion to Dismiss and for Entry of Scheduling Order; the City's Memorandum of Law in Support of Motion to Dismiss; the Association's Motion in Opposition to Motion to Dismiss; the Association's Memorandum of Law in Opposition to Motion to Dismiss; the parties pre-arbitration briefs; the Arbitrator's award and correspondence; and, all other exhibits attached by the parties to there pleadings.
2. It determined that portion of the City's motion relating to the entry of a scheduling order to be moot.
3. It determined that the parties' CBA contains a Grievance Procedure that provides for an arbitrator's decision to be final and binding (Article 7.6) and leaves the designation of the losing party in the arbitration proceeding to the arbitrator. (Article 7.7)
4. It determined that the arbitrator did not exceed the limitations established by the parties in Article 7.6 of their CBA, nor that he abused the discretion left to him by the parties in Article 7.7 of their CBA when he considered the parties' respective cases fully presented to him, when he issued his award (AAA Case No. 1139-0034-99), and when he wrote his letter designating both the City and the Association as "losing parties" under Article 7.7 of the CBA (Arbitrator's letter dated October 4, 1999), thereby splitting the Arbitrator's expenses between the two parties.

5. It determined that to the extent that the parties, or either of them, maintained a position that the arbitrator's expenses were wrongly assessed by the arbitrator at the time of his designation, that such a position should have been raised with the arbitrator as an administrative step internal to the arbitration process and invited by his October 4, 1999 letter that was concurrently provided with his award to the parties' agreed upon arbitration service, the American Arbitration Association. Having found above in Paragraph #4 that the arbitrator was granted sufficient discretion by the parties' CBA to determine the appropriate responsibility of either or both parties for his expenses, the Board is of the opinion that it is not within its statutory purpose to intervene in the billing procedures of arbitrators employed by parties.
6. It concludes that the parties, by the arbitration process that they mutually agreed upon and mutually expressed in the language of their CBA, have each received the full benefit of their bargain, regardless of the fact that neither received the full relief it requested of the arbitrator.
7. It further concludes, that to the extent that the actions complained of by the Association in its ULP complaint may suggest statutory violations under the provisions of RSA 273-A:5 I (a), (b) and (h), its review of the full record, including the pre-arbitration briefs of the parties and the findings of the arbitrator, establishes that the Association's issues have been fully heard and properly considered by the arbitrator in the context of constitutional and statutory law.
8. It GRANTED the City's Motion to Dismiss the complaint of unfair labor charges brought by the Association.

So ordered.

Signed this 15th day of September, 2000.



JACK BUCKLEY, CHAIRMAN

By unanimous vote. Jack Buckley, Chairman, presiding. Members Seymour Osman and E. Vincent Hall present and voting.