



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**SERGEANT PAT PALMER AND
NH TROOPERS' ASSOCIATION**

CASE NO. P-0754-20

v.

DECISION NO. 2008-237

**STATE OF NH DEPARTMENT OF SAFETY,
DIVISION OF STATE POLICE**

APPEARANCES

For Sergeant Pat Palmer & New Hampshire Troopers Association:
James Donchess, Esq.

For the State of New Hampshire Department of Safety, Division of State Police:
Marta Modigliani, Esq.

BACKGROUND

Sergeant Pat Palmer and the New Hampshire Troopers Association (the "Union") filed an unfair labor practice complaint on March 31, 2008 alleging that the State of New Hampshire Department of Safety, Division of State Police (the "State") committed an unfair labor practice in violation of RSA 273-A:5 I (h). The Union contends that Sgt Palmer performs the duties of Assistant Troop Commander or Assistant Unit Commander and is entitled to a one grade pay increase under Article 19.18 of the parties' collective bargaining agreement. The Union requests that the board: 1) declare that the State committed an unfair labor practice in refusing to pay Sgt.

Palmer at Grade 25; 2) order that the State pay Sgt. Palmer at Grade 25; and 3) order such other relief as may be just.

The State filed its answer on April 22, 2008 and denies the charges. The State contends that Sgt. Palmer does not perform the duties necessary to receive the demanded one grade pay increase.

This matter was originally scheduled for pre-hearing on May 15, 2008 and hearing on June 5, 2008. The parties' joint motion to continue these hearing dates was granted. The board conducted a hearing on the complaint on the rescheduled hearing date of July 10, 2008 at the offices of the Public Employee Labor Relations Board in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The record was held open until August 5, 2008 to allow the parties to file post-hearing briefs. The parties' joint stipulations appear as Findings of Fact 3-9, set forth below.

FINDINGS OF FACT

1. The State of New Hampshire, Department of Safety, Division of State Police is a public employer within the meaning of RSA 273-A:1, X.
2. The New Hampshire Troopers Association is the board certified exclusive bargaining representative of certain employees of the New Hampshire Department of Safety, Division of State Police, including Sergeant Pat Palmer.
3. On July 15, 1988, Sgt. Patrick Palmer was hired by the Division of State Police, Department of Safety as a Probationary Trooper.
4. Effective July 15, 1989, Sgt. Patrick Palmer was promoted from Probationary Trooper to Trooper I.

5. Effective December 18, 1998, Sgt. Patrick Palmer was promoted from Trooper I to Trooper II.

6. Effective September 24, 2004, Sgt. Patrick Palmer was promoted to Sgt. I and assigned to Troop B, K-9 Unit Commander.

7. As a result of personnel action, effective March 18, 2005, all State Police Sergeant I and State Police Sergeant II positions were reclassified as State Police Sergeant and moved one grade from 23 to 24.

8. As a result of the personnel reclassification of State Police Sergeants, effective March 18, 2005, those incumbents who were currently serving as Assistant Troop Commanders were designated as temporary assignment with an override to labor grade 25.

9. The Supplemental Job Description for Assistant Troop Commander in Troop A is representative of all Assistant Troop commander positions in the Division.

10. The parties' 2005-2007 and 2007-2009 collective bargaining agreements (Joint Exhibits 11 and 12) both provide in Article 19.18 as follows:

Any State Police Sergeant who performs the duties of Assistant Troop Commander or Assistant Unit Commander shall receive a differential equivalent to a one grade increase for all hours worked during the period of the assignment.

11. The impetus for Article 19.18 was to continue to provide a pay differential for former Sergeant IIs on account of their duties as Assistant Troop Commanders. Historically, a Sergeant I was a patrol Sergeant, and a Sergeant II was an Assistant Troop Commander who was responsible for a Troop in the Troop Commander's absence. Lieutenants serve as Troop Commanders.

12. Article 19.18 has also been applied to Sergeants who are not former Sergeant IIs or who are not serving as Assistant Troop Commanders or Assistant Unit Commanders. This

includes Sergeant Lombardi, Commander of the Aviation Unit, Sergeant Gereoux, Commander of the Permits and Licensing Unit, Sergeant Parsons, Commander of the Explosives Unit, and the Sergeant who is the Commander of the Headquarters Communications Unit. Like Assistant Troop and Unit Commanders, these individuals have supervisory responsibility in areas such as employee evaluations, scheduling, approval of annual and sick leave requests, and also have subordinate employees regularly report to them. They generally oversee personnel affairs.

13. The State utilizes Canine Unit teams in law enforcement activities such as tracking and locating suspects, searching for lost people, protecting officers, detection work such as location of narcotics, and building searches.

14. In 2004 Sgt. Palmer successfully applied for the position of "Patrol Supervisor for Troop B/Canine Unit Commander." In this position Sgt. Palmer served as the Troop B midnight patrol supervisor while also performing the responsibilities of the Canine Unit Commander. Because of the amount of time Sgt. Palmer was devoting to his responsibilities as the Canine Unit Commander, the position was restructured as a full time position. In October of 2005, Sgt. Palmer began serving as the full-time Canine Unit Commander and he discontinued his responsibilities as Patrol Supervisor. Currently Sgt. Palmer reports to Captain Colitti, the Commander of the Special Services Unit.

14. Sgt. Palmer's immediate predecessor as Canine Unit Commander was Sgt. D'Auria, who retired as a Sergeant I.

15. Troopers interested in serving on a Canine Unit team participate in a Canine Unit selection process, which involves a physical test and an oral board. Sgt. Palmer submits his ranking of the candidates who participate in the selection process to Colonel Booth, but Sgt.

Palmer does not finally select or determine which Troopers will serve as Canine Officers. Union Exhibit 1.

16. The State currently maintains 25 Canine Unit teams. The State purchases the dogs from an outside vendor at a cost of approximately \$5,500 to \$6,000 per animal. The dogs are fully trained at the time they are delivered.

17. As Commander of the Canine Unit, Sgt. Palmer arranges veterinary care of the dogs, assigns Troopers to dogs, and trains them to work as a team. The training includes 400 hours provided over a 10 week training program in the spring to obtain certification as a patrol team. In the fall teams attend Detection School, consisting of an additional 200 hours provided over 5 weeks. A Trooper who has previously completed the training program must repeat the training in the event the Trooper is assigned a new dog. Sgt. Palmer also oversees twice weekly training during other times of the year, documents training, and reviews canine related expense vouchers before they are submitted to Captain Colitti.

18. By the time a Trooper and dog are certified as a team that State has invested approximately \$25,000 to \$30,000 in the team.

17. Troopers attending Canine Unit training are still assigned to their original Troop and remain subject to the chain of command in their troop. Canine teams are effectively disbursed in Troops throughout the state as a result. As the full time Canine Unit Commander, Sgt. Palmer is not assigned to any Troop, and he is not part of the formal chain of command of any Troop.

18. As Canine Unit Commander, Sgt. Palmer addresses Canine Unit team issues that may arise involving the dog and the handler. He identifies performance problems and counsels handlers who are not meeting expectations. Troop patrol supervisors typically solicit Sgt.

Palmer's input on the conduct of Trooper's performance as canine handlers in the field and during training in connection with a Trooper's annual evaluation. However, Sgt. Palmer does not complete or sign employee evaluations.

19. Although some Canine Unit teams have specific strengths, in general, all teams are trained to the same minimum standards, and are presumed equally capable. There are exceptions illustrated, for example, by a team with a bloodhound as compared to a team with a German shepherd. A bloodhound is more proficient in tracking cases, such as an effort to locate a missing Alzheimer's patient, while a different dog may be better suited to deal with a situation involving a potentially violent fugitive.

20. Under current operating procedures, Chapter 47-D.1.1, Joint Exhibit 6, the procedure for dispatching a canine is as follows:

- A. No canine will be dispatched to an incident without the prior approval of the Troop Commander or an NCO within the Troop requesting the same. In the event that such a request is made to Communications, they will insure that such approval is noted by the appropriate log entries.
- B. In the event that a canine is dispatched from his home Troop into another, the canine and handler will come under the operational control of the Troop Commander of the Troop where the request for service occurs.
- C. In the event a canine is ordered to respond to a Troop Area other than his/her own, Communications will notify the Troop Commander to which the Division member and canine are assigned before the canine is dispatched.
- D. The Canine Unit Commander will be advised of all requests for use of the canines under his/her command.
- E. When a canine is dispatched to an incident, the handler will evaluate the situation from available information.
 1. The handler will determine how the canine will or will not be used and will inform the senior Division member present of his recommendations.
 2. The senior Division member will coordinate the activities of all other personnel in connection with the use of the canine.

21. There are approximately 1600 service calls a year involving the deployment of a canine. Although Troop commanders are responsible for providing approval prior to the deployment of a canine, Sgt. Palmer is sometimes contacted directly with a request for canine assistance. Sgt. Palmer estimates that he was involved in 50 deployments in the six months prior to the hearing in this matter. Captain Colitti became aware of this practice after he assumed the position of Commander of the Special Services Unit in September of 2005. He has taken steps designed to achieve stricter compliance with Chapter 47-D.1.1 dispatch procedures, and he does not approve of the deviations resulting from Sgt. Palmer's dispatch of canines.

DECISION AND ORDER

DECISION SUMMARY

The Commander of the Canine Unit has training and administrative duties and responsibilities that are important to the State Police's law enforcement mission. However, there is insufficient evidence that the Commander of the Canine Unit performs either the duties of or duties similar to those of an Assistant Troop Commander or Assistant Unit Commander. Accordingly Sgt. Palmer is not entitled to the requested pay increase under Article 19.18 of the parties' 2007-2009 collective bargaining agreement.

JURISDICTION:

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. *See* RSA 273-A:6, I. PELRB jurisdiction is proper in this case as the Association has alleged violations of RSA 273-A:5 I (h)(to breach a collective bargaining agreement).

DISCUSSION:

The board interprets the reference to the duties of an Assistant Troop or Unit Commander under Article 19.18 to refer to Troopers whose duties are characterized by supervisory responsibility in the areas of employee scheduling, employee evaluation, granting of annual or sick leave requests, the fact that they have employees who report to them, and who have responsibility in similar personnel matters. Sgt. Palmer's request for the Article 19.18 pay increase was denied because he did not have sufficient responsibility in these areas. Sgt. Palmer's responsibilities as Commander of the Canine Unit differ from those of the other unit commanders who have received the Article 19.18 pay differential, as his duties are primarily characterized by administrative coordination and training of Canine Unit teams. He does not have general supervisory responsibility over trainees or duly certified Canine Unit teams in the areas of employee scheduling, employee evaluation, granting of annual or sick leave requests, and in other similar personnel matters. Increased involvement in such areas is typical of employees who are charged with more significant supervisory duties, and is characteristic of Assistant Troop Commanders, Assistant Unit Commanders, and the other Unit Commanders who currently receive the Article 19.18 pay differential. These distinctions are sufficient to justify the State's denial of Sgt. Palmer's request for the Article 19.18 pay differential.

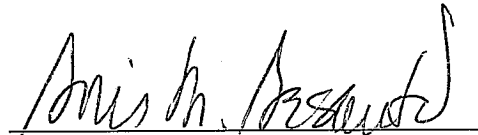
Nothing in the board's decision is intended to minimize or diminish the significance or importance of Sgt. Palmer's work as Commander of the Canine Unit. The board recognizes the value of Sgt. Palmer's services and the importance of his role in the State's law enforcement mission. However, Sgt. Palmer's entitlement to the requested relief is controlled by Article 19.18, and not by a generalized sense or assessment of the relative value of Sgt. Palmer's work in

comparison to the work of Assistant Troop or Unit Commanders or the work of the other Unit Commanders who currently receive the Article 19.18 pay differential.

In accordance with the foregoing the complaint is dismissed.

It is so ordered.

Signed this ^{20th} day of NOVEMBER, 2008.


Doris M. Desautel, Alternate Chair

By unanimous vote. Alternate Chair Doris M. Desautel presiding with Board Members Kevin E. Cash and Sanford Roberts, Esq. also voting.

Distribution:
James Donchess, Esq.
Marta Modigliani, Esq.