



STATE OF NEW HAMPSHIRE
Public Employee Labor Relations Board

New Hampshire Troopers Association

v.

**State of New Hampshire, Department of Safety,
Division of State Police**

**Case No. G-0097-15
Decision No. 2015-218**

Appearances: John S. Krupski, Esq.,
Milner & Krupski, PLLC
Concord, New Hampshire for the Complainant

Marta A. Modigliani, Esq.
New Hampshire Dept. of Safety, Division of State Police
Concord, New Hampshire for the Respondent

Background:

On April 27, 2015, the New Hampshire Troopers Association (Union) filed an unfair labor practice against the New Hampshire Department of Safety, Division of State Police (State). The Union claims the State breached the parties' collective bargaining agreement (CBA) because the State refuses to cover the cost of laundering dress shirts and blouses (dress shirts) worn by unit employees on duty. The Union maintains the State has violated CBA Article 19.6.2, which provides that the "*employer shall pay cleaning expenses for uniforms and civilian clothing worn on duty in accordance with Division policy. Employees can wear civilian clothing when attending court; however the Division will not reimburse those cleaning expenses.*" (Emphasis added). The Union argues that since, pursuant to Division policy, dress shirts are part of the

mandatory civilian clothing for detectives and those on a plain clothes assignment, the State must pay the cleaning expense for dress shirts under Article 19.6.2.

The Union charges that the State has committed an unfair labor practice in violation of RSA 273-A:5, I (g)(to fail to comply with this chapter or any rule adopted under this chapter); (h)(to breach a collective bargaining agreement); and (i)(to make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule). The Union requests that the PELRB: 1) find that the State committed an unfair labor practice; 2) order the State to cease and desist from any further violations; and 3) make any adversely affected employees whole.

The State denies that it is obligated to cover the cost of cleaning dress shirts under Article 19.6.2. According to the State, it has only agreed to cover the expense of clothing which requires dry cleaning (i.e. suits, jackets, pants) but not laundering (i.e. clean and press of dress shirts). The State maintains this is the intent of Article 19.6.2 and is consistent with the Division's policy and practice. The State also argues that, under Article 19.6.2, it has the right to determine, through Division policy, what cleaning expenses will be paid and that current Division policy excludes dress shirts as a "wash and wear" item. The State requests that the PELRB deny all charges and dismiss the Union's complaint.

The undersigned board held a hearing on June 24, 2015. Both parties have filed post-hearing briefs, and our decision is as follows:

Findings of Fact

1. The State is a public employer within the meaning of RSA 273-A.

2. The Union is the exclusive representative of a State Police bargaining unit comprised of all sworn personnel up to and including the rank of Sergeant pursuant to an October 18, 1990 PELRB certification.

3. Chapter 26-B of the Division of State Police Professional Standards of Conduct (PSC Ch. 26-B) is titled "Issue, Care & Wearing of Uniforms." The current version of PSC Ch. 26-B became effective on November 6, 2007 and is set forth in Joint Exhibit 3. Prior versions are set forth in State Exhibits 3 and 4, with effective dates of 1996 and 1999, respectively. The Division developed PSC Ch. 26-B in the late 1990's to support the Division's efforts to obtain accreditation from a national accreditation organization.

4. Under PSC Ch. 26-B, the Division issues a winter uniform, a summer uniform, and a utility uniform, together with additional apparel and accessories (e.g. coats, jackets, hats, shoes, boots, leather gear, badges, etc.) to sworn members of the State Police. There are six specific uniform combinations, designated as Class A, B, C, D, E, and F. See sub-sections B.2.1 to 3.1 of PSC Ch. 26-B (Joint Exhibit 3). Civilian clothing worn by certain bargaining unit employees (see Finding of Fact 5, *infra*) is not listed as Division issued uniform or identified as one of the designated Classes of uniforms.

5. Dress requirements for bargaining unit employees who are detectives or who have a plain clothes assignment are set forth in PSC 26-B.3.3 M:

M. Detectives or other Plain Clothes Assignments

1. When personnel are assigned to plain-clothes assignments they shall present a professional, businesslike appearance and they shall (sic) to the current appearance policy of the Department of Safety.
2. Acceptable attire shall conform to the following guidelines:
 - a. Male personnel shall wear a business suit, or sport coat and trousers, with a dress shirt and necktie.

- b. Female personnel shall wear a dress suit, or pants suit, a skirt or pants with a blouse, sweater or jacket.
- c. Division members may also wear other appropriate clothing as authorized by the Director.

3. The issued sidearm, handcuffs, badge and Division identification will be carried at all times when on duty unless authorized by the Director.

6. "Wages and Benefits" are addressed in Article 19 of the 2013-2015 CBA (Joint Exhibit 1). Article 19.6.2 provides that:

The employer shall pay cleaning expenses for uniforms and civilian clothing worn on duty in accordance with Division policy. Employees can wear civilian clothing when attending court; however the Division will not reimburse those cleaning expenses.

The 2011-2013 CBA (Union Exhibit 3) contained the same Article 19.6.2 language.

7. The CBAs prior to 2011 and dating back to 1997 (State Exhibit 2) contained the following Article 19.6.2 language:

The employer shall pay cleaning expenses for civilian clothing worn on duty in accordance with Division policy.

8. PSC Ch. 26-B.3.2 (Joint Exhibit 3), titled "Care of the Uniform," concerns Division issued uniforms and provides in part as follows:

A. All leather will be polished and brass will be shined.

B. **Cleaning and Pressing** – All uniforms issued by the Division will be properly cleaned, creased and pressed and maintained in serviceable condition in order to present a neat and professional appearance.

- 1. The Division member will be personally responsible for seeing that all uniforms are properly cleaned and pressed.
- 2. Cleaning, unless otherwise authorized, shall be done at a contract cleaner who shall bill the State directly.
- 3. Wash and wear uniforms **will not** be dry-cleaned. (Emphasis in original).

9. Union Exhibits 7-11 reflect that bargaining unit employees wearing plain clothes on duty have had their dress shirts laundered at the State's expense during the 2010 to 2014 time period.

10. In the past, unit employee supervisors have instructed at least some of those new to a plain clothes assignment that they were entitled to have their dress shirts laundered at the State's expense. At one point a supervisor notified an approved cleaning vendor that the State would not pay for dress shirt laundering. However, the supervisor later reversed this directive after a review of Article 19.6.2.

11. A number of management witnesses testified that the State did and does not cover the expense of laundering dress shirts, although Colonel Quinn testified that he originally believed otherwise until he developed a different understanding as more years passed. The information provided by these witnesses related to their general history working for the State Police over the past 30 years (or longer), and did not necessarily reflect experience as bargaining unit employee subject to the 1997 CBA or the successor CBAs, or as a Division representative administering the 1997 CBA or the successor CBAs.

12. The State Manager of Employee Relations, who also serves as the State's Chief Negotiator, reported that he consulted with his predecessor and other management historically involved in collective bargaining negotiation and personnel matters about Article 19.6.2. They advised him that the State did not intend to cover the expense of laundering dress shirts under this Article but these individuals did not appear at hearing to elaborate or explain the basis for this assertion.

13. In February of 2015, Major Conte issued a directive (Joint Exhibit 2) to all sworn members of the State Police:

In an effort to clear up confusion on division covered dry cleaning; **Male** Sworn Personnel assigned to Detective or other Plain Clothes Positions are allowed to **submit business suits, sport coats, neckties and trousers**. **Female** Sworn Personnel assigned to Detective or other Plain Clothes Positions are allowed to submit **dress suits, pants suit, skirt, pants, or jacket**. In both instances, dress shirts or blouses **will not** be covered by division contracted dry cleaning services. (Emphasis in original).

14. The 2013-15 CBA includes a four step grievance procedure set forth in Article 14. Sub-section 14.5 is titled "Step IV – Public Employees Labor Relations Board" and provides as follows:

14.5.1 If subsequent to the Director's decision the Association feels that further review is justified an unfair labor practice complaint may be submitted to the Public Employees Labor Relations Board. A copy of the complaint must be sent to the Employer and the Manager of Employee Relations at the same time. The decision of the Public Employees Labor Relations Board shall be final and binding.

15. The Union filed an Article 14 grievance which challenged Major Conte's directive on the grounds that it violated Article 19.6.2. The State denied the Union's grievance at Steps I-III, and the Union then filed this unfair labor practice complaint with the PELRB in accordance with Step IV of Article 14.

Decision and Order

Decision Summary:

The State violated Article 19.6.2 of the CBA and committed an unfair labor practice in violation of RSA 273-A:5, I (g), (h), and (i) on account of Major Conte's Directive prohibiting the laundering of dress shirts at the State's expense. The State is ordered to post this decision in a conspicuous place where unit employees work for 60 days, make affected employees whole, and cease and desist from further violations.

Jurisdiction:

The PELRB has primary jurisdiction of all RSA 273-A:5 alleged unfair labor practices per RSA 273-A:6, I.

Discussion:

The Union argues that the cost of having dress shirts cleaned (wash and press) at a State approved vendor qualifies as a “cleaning expenses” covered by Article 19.6.2. The State disagrees, and insists that the only “cleaning expenses” covered are “dry-cleaning expenses.” The State also maintains that the “in accordance with Division policy” language means, in substance, the State has the right to unilaterally determine which cleaning costs it will pay. We find that, under Article 19.6.2, the State is required to absorb the cost of cleaning civilian clothing, including dress shirts, “worn on duty in accordance with Division policy.”

The interpretation of collective bargaining agreements is governed by the normal rules of contract construction, which include the following principles:

We begin by focusing upon the language of the CBA, as it reflects the parties' intent. This intent is determined from the agreement taken as a whole, and by construing its terms according to the common meaning of their words and phrases. The interpretation of a collective bargaining agreement, including whether a provision or clause is ambiguous, is ultimately a question of law for this court to decide. A clause is ambiguous when the contracting parties reasonably differ as to its meaning.

In re Appeal of Nashua Police Commission, 149 N.H. 688, 690 (2003)(quotations and citations omitted.) It should be noted that in this case both parties were allowed to present evidence to assist the PELRB in resolving this contract dispute in the event we found the requisite ambiguity. However, for the reasons discussed, we find that the relevant contract language is unambiguous and therefore resort to such extrinsic evidence to ascertain the meaning of Article 19.6.2 is unnecessary. The fact that the State and the Union disagree about the meaning of Article 19.6.2 in this case is not sufficient to render the Article in general, or the phrase “cleaning expenses” in particular, legally ambiguous. The relevant inquiry is whether the parties reasonably differ as to the meaning of Article 19.6.2, and we cannot find that they reasonably differ given the plain and straightforward meaning and application of this contract provision.

The relevant context in this case includes the fact that the CBA addresses the terms and conditions of employment for sworn members of the State Police, a group whose professional appearance is highly valued and promoted. There are, for example, highly detailed descriptions of the different uniform classes and the mandated “civilian clothing” apparel for those on plain clothes assignment. Further, Division issued uniforms “must be properly cleaned, creased and pressed and maintained in serviceable condition in order to present a neat and professional appearance.” See Finding of Fact 8. Additionally, personnel on “plain-clothes assignments ...shall present a professional, businesslike appearance...” See Finding of Fact 5.

With respect to Article 19.6.2 in general, we begin our analysis by taking into account the manner in which the parties have indexed this contract provision in the CBA. It is inserted in the “Wages and Benefits” portion of the CBA, which reflects a general intent to confer a benefit upon unit employees. As to the specific language used, we note that the first sentence of Article 19.6.2 is divided into two basic parts, a format that has been in place since the 1997 CBA. The first part states the Division’s obligation and the benefit being provided to unit employees, as reflected by the language “[t]he employer shall pay cleaning expenses.” The second part describes what cleaning expenses the employer shall pay, which from 1997 to 2011 were cleaning expenses “for civilian clothing worn on duty in accordance with Division policy,” and since 2011 “for uniforms and civilian clothing worn on duty in accordance with Division policy.” This language is straightforward and direct, and it expresses the parties’ intent in a clear manner. For example, the phrase “cleaning expenses” is, on its face, simple and unambiguous. It is broad and inclusive, and both the costs of professional dry cleaning and the costs of professional laundering fall within its purview as both are clothing “cleaning expenses” associated with the professional appearance the Division demands that unit employees maintain.

The subsequent insertion of the word “uniforms” in the first sentence and the addition of a second sentence (“Employees can wear civilian clothing when attending court; however the Division will not reimburse those cleaning expenses”) in the 2011 version of Article 19.6.2 does not alter this basic construction.

The State’s argument that Article 19.6.2 should be construed to cover only “dry cleaning expenses” is not persuasive since the phrase “cleaning expenses” does not have the limited or specialized meaning the State attributes to it. We are also not persuaded that the State reserved the authority to unilaterally determine what cleaning expenses it will pay by virtue of the “in accordance with Division policy” language. Such an argument is based upon a strained and unreasonable interpretation of the first sentence of Article 19.6.2. It is also one which effectively negates the stated undertaking (employer payment of cleaning expenses) and renders any purported employer obligation illusory and Article 19.6.2 nugatory. This understanding would, in substance, transform Article 19.6.2 from an employee benefit provision into a statement of a specific managerial prerogative since it would authorize the Division to dictate cleaning expense “exclusions” through Division policy. Instead, we find that, read properly and in context, the cited language modifies the words “civilian clothing” and should be read “civilian clothing worn on duty in accordance with Division policy.” Further, even if Division policy did apply and control what specific cleaning expenses the Division will pay under Article 19.6.2, the Division policy cited by the State (PSC Ch. 26-B.3.2) only addresses “Division issued uniforms.” The civilian clothing worn by a bargaining unit employee on a plain clothes assignment is not a “Division issued uniform.” See Finding of Fact 3-4, 8.

In accordance with the foregoing we conclude that the State violated Article 19.6.2 of the CBA and committed an unfair labor practice in violation of RSA 273-A:5, I (g), (h), and (i) on

account of Major Conte's Directive prohibiting the laundering of dress shirts at the State's expense. The State is ordered to post this decision in a conspicuous place where unit employees work for 60 days, make affected employees whole, and cease and desist from further violations.

So Ordered.

Date: September 28, 2015

/s/ Michele E. Kenney
Michele E. Kenney, Esq., Chair

By unanimous vote of Chair Michele E. Kenney, Esq., Board Member Carol M. Granfield, and Board Member Richard J. Laughton, Jr.

Distribution: John S. Krupski, Esq.
Marta A. Modigliani, Esq.