



NH Supreme Court affirmed this decision on February 12, 1996, Supreme Court Case No. 94-811.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE TROOPERS ASSOCIATION	:	
	:	
Complainant	:	
	:	
v.	:	CASE NO. P-0754:1
	:	
NEW HAMPSHIRE DEPARTMENT OF SAFETY, DIVISION OF STATE POLICE	:	DECISION NO. 94-40
	:	
Respondent	:	
	:	

APPEARANCES

Representing New Hampshire Troopers Association:

Pamela Khoury, Esq.

Representing N.H. Department of Safety, Division of State Police:

Thomas F. Manning, Manager of Employee Relations

Also appearing:

- Thomas F. Kennedy, Jr., New Hampshire State Police
- Michael Doucette, New Hampshire Troopers Association
- Louis Copponi, New Hampshire Troopers Association
- Richard D'Auria, New Hampshire Troopers Association
- Andrea G. Chatfield, New Hampshire Troopers Association
- David Gagne, New Hampshire Troopers Association
- Chris Henchey, State Employees Association

BACKGROUND

The New Hampshire Troopers Association filed an unfair labor practice charge on December 28, 1993 alleging violation of RSA 273-A:5 I (h) for failure to adhere to a provision of the collective bargaining agreement. The State filed a response on January 12, 1994 denying the charge and requesting dismissal on the basis of untimely filing pursuant to RSA 273-A:6 VII. That motion was held

in abeyance when the case was heard on March 14, 1994.

FINDINGS OF FACT

1. The State of New Hampshire is a "public employer" of sworn troopers and other personnel within the meaning of RSA 273-A:1 X.
2. The New Hampshire Troopers Association is the duly certified bargaining agent for sworn members of the New Hampshire Department of Safety, Division of State Police.
3. The parties executed a collective bargaining agreement (CBA) for the years July 1, 1989 through June 30, 1991. That CBA was extended to govern the dealings of the parties through June 30, 1993.
4. The grievance procedures of the CBA pertinent to this case read as follow:
 - 14.1.4 Any employee having problems concerning the interpretation or application of any provisions of the Agreement shall seek adjustment in the step order listed below according to the organizational pattern of his agency. There shall be not less than two nor more than five adjustment steps.
 - 14.1.5 All time limits set herein may by mutual agreement between the grievant and the Employer be extended.
 - 14.1.7 If a group of employees file a grievance, not more than three (3) employees shall represent the group at any scheduled meetings provided for in the steps listed below.
 - 14.1.8 In any case where the rights of the Association, as opposed to the rights of members, are affected, the Association may file a grievance in its own name through any of its agents or officers.

A grievance initiated by the Association against the Employer shall be filed directly with the State Negotiator and shall be considered a Step III appeal.

14.1.9.A A grievance shall be filed within fifteen (15) work days of the time the grievant knew or should have known of the alleged violation.

5. From the CBA's inception, on July 1, 1989, confusion has reigned as to the relationship of a contract provision and an administrative procedure; both quoted below. As early as September 1, 1989, Ben Mozrall, then president of Local 52 of the SEA, the certified bargaining unit which preceded the Troopers Association, sent a letter attempting to negotiate and clarify the conflicting interpretations of the two provisions.
6. On October 2, 1990, efforts were made to grieve the matter. Chris Henchey, the SEA's outgoing bargaining representative, submitted a group grievance signed by eight troopers. On October 24, 1990, Thomas Manning of the New Hampshire Division of Personnel refused to take up the grievance until a new bargaining representative contacted him.
7. No further contact occurred for more than one year. Letters were sent by the representatives of the New Hampshire Troopers Association on February 10, 1992 and November 29, 1993. The grievance was refused by letter of December 14, 1993.
8. The 1989 agreement includes a new provision governing recall to duty status (Recall). Article VIII, Section 8.9 of the CBA provides that troopers assigned to recall status shall be paid according to a set formula. The wording of the section is:

any employee, subject to recall, shall receive six (6) hours' pay for every twenty-four (24) hours on recall status. The employee shall be notified when he/she is expected to be on recall. The employee does not waive the right to the minimum time allowed or the portal to portal pay.
9. Despite the above quoted provision, troopers who have been assigned to recall status have not been paid. The State admits that those on recall status after specific notification by a superior are due compensation at the formula of one hour's pay for four hours' on recall status. A dispute exists between the parties

regarding the interpretation of the notice requirement of the recall provision and interpretation of a 1983 administrative procedure, GU-012 4.1 which reads in pertinent part:

When any patrol or duty assignment is not actively covered for any reason, the period left uncovered will be the responsibility of the individual terminating scheduled duty for the first half of the vacant period and responsibility of the person who will come on duty for the other half of the vacant period.

Examples: Trooper Jones terminates Patrol #1 at 2400 hours and Trooper Smith is scheduled to work Patrol #1 starting at 0800 hours. Trooper Jones has the responsibility up to 0400 hours and Trooper Smith after 0400 hours. This responsibility does not qualify for 'Telephone Standby' unless specifically ordered by the Director.

10. Telephone standby status is distinguished from recall status. Telephone standby requires the trooper to be in uniform, alert and ready to act immediately upon notification of the occurrence an anticipated emergency. Recall status means the trooper must be available to be reached by telephone, not machine, and must be fit for duty. Troopers have been disciplined for alcohol consumption while on recall status because it left them unfit to return to duty although they were not being compensated at full or less than full rates of pay at the time of that consumption. If a trooper is able, he may sleep through the recall shift unless he is called to return to duty because of an automobile accident or some other situation.
11. Taken as a whole, testimony indicated that assignment to a shift before or after the open shift was tantamount to assignment to recall status.
12. Operation of the recall provision continued until the date of the new contract, July 1, 1993. This charge was filed on December 28, 1993.

DECISION AND ORDER


The State's Motion to Dismiss is granted after careful consideration of the law and equities applicable. RSA 273-A:6 VII

mandates dismissal of complaints of alleged violations said to have occurred more than six months prior to filing charges. The circumstances of which Troopers Association complain have continued since 1989. Charges were not properly pursued before the PELRB for three and one half years. A change in bargaining representative likely played a role in the delay; however, the onus for procedural errors resulting from the change in representation may not be laid on the State but remains with the Troopers and their duly chosen representatives.

Therefore, the question on the merits is not reached and the relief requested by the Troopers Association is DENIED.

So ordered

Signed this 30th day of August, 1994.



EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard Roulx and E. Vincent Hall present and voting.