



NH Supreme Court affirmed this decision on 10-05-2000, Slip Opinion No. 98-374.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| NEW HAMPSHIRE TROOPERS | : | |
| ASSOCIATION | : | |
| | : | |
| Complainant | : | |
| | : | |
| v. | : | CASE NO. P-0754:5 |
| | : | |
| STATE OF NEW HAMPSHIRE, | : | DECISION NO. 1998-016 |
| DEPARTMENT OF SAFETY | : | |
| | : | |
| Respondent | : | |

APPEARANCES

Representing New Hampshire Troopers Association:

James W. Donchess, Esq.

Representing State of New Hampshire:

Douglas Jones, Esq.

Also appearing:

- Kathleen M. Lord, New Hampshire State Police
- Virginia Lamberton, Division of Personnel
- Nancy Wiggin, New Hampshire State Police
- Tia Massaro, New Hampshire Troopers Association
- P.A. Massaro, New Hampshire Troopers Association
- L. Copponi, New Hampshire Troopers Association
- C. J. Winters, New Hampshire Troopers Association
- R. H. Terhune, State Police

Background

The New Hampshire Troopers Association (Association) filed unfair labor practice (ULP) charges against the State of New Hampshire Department of Safety (State) on August 27, 1997 alleging violations of RSA 273-A:5 I (e) and (g) relating to a failure to bargain and a unilateral change in working conditions by eliminating the rank and title of "corporal" for certain bargaining unit positions. The State filed its answer and a motion to dismiss on September 11, 1997. A hearing was held on the motion to dismiss before a hearing officer on November 14, 1997 after which a decision was issued on December 18, 1997 denying that motion. See Decision No. 97-122. This matter was then heard on the merits by the PELRB on February 12, 1998.

FINDINGS OF FACT

1. The State of New Hampshire through its Department of Safety, employs state police personnel in the grades of Trooper I, Trooper II, Corporal and other grades, and, thus, is a "public employer" within the meaning of RSA 273-A: 1 X.
2. The New Hampshire Troopers Association is the duly certified bargaining agent for sworn personnel employed by the Division of State Police up to and including the grade of sergeant.
3. The State and the Association have negotiated a collective bargaining agreement (CBA) which is awaiting funding by the legislature. Meanwhile, the Association continues to administer contract and sub-unit provisions negotiated on behalf of the employees in Finding No. 2 by the prior bargaining agent. The CBA does not address the issue of "rank", i.e., the types of duties required in order to hold or progress from one bargaining unit rank to another. On the other hand, duties generally are translated into a "labor grade" through the State's "class evaluation plan" (State Exhibit A) which, in turn, determines the rate of compensation for a given job specification.
4. On October 19, 1992, the New Hampshire Division of Personnel, by letter to Colonel Lynn M. Presby (State Exhibit D), recognized a technique to promote senior troopers with the requisite record, longevity, training and exam scores to the rank of corporal even though the promoted corporal would not be in a "supervisory" or "hard corporal"

position. Thereafter, the non-officer structure in a troop was sergeants, labor grade 21, supervisory or "hard" corporal, labor grade 19, upgraded or "soft" corporal, labor grade 19, trooper, labor grade 17 and trooper-trainee, labor grade 13. (State Exhibit E.)

5. In October of 1996, the Troopers Association and the administration of the Division of State Police jointly recognized "problems with the present rank structure" within the state Police and formed a committee to identify and address those problems to the benefit of the Association and the Division in ways which would "increase the economic status, benefits, job security and pride within the organization." (State Exhibit F.) One of the problems identified was the fact that soft corporals, without supervisory responsibilities, were earning the same pay as hard corporals who were first line supervisory personnel.
6. On February 28, 1997, the Director of Personnel, Virginia Lamberton, wrote Richard M. Flynn, Commissioner of the Department of Safety, approving the "first phase" of a reorganization plan. (State Exhibit G.) The new plan changed the non-officer structure of the organization to sergeant, labor grade 22, sergeant labor grade 21, corporal, labor grade 20, trooper II, labor grade 19, trooper I, labor grade 17 and probationary trooper, labor grade 13.
7. Association witnesses who were formerly corporals and who are now Trooper II's as the result of the 1997 reorganization testified that on and after February 28, 1997 they were no longer given supervisory duties, even on an "as needed" basis. One such Corporal became a Trooper II after his supervisory duties were eliminated because his responsibilities as a midnight supervisor were assumed by another individual who retained his rank of corporal.
8. By letter of March 28, 1997, counsel for the Association wrote to the Director of State Police and the State Negotiator to protest the unilateral decision to implement changes in terms and conditions of employment, namely new wage scales and a new rank structure. (Association Exhibit No. 4.) On the same date, counsel for the Association wrote Lamberton

seeking reconsideration of the reclassification plan which she had approved (Finding No. 6.) The Association claimed it had not received notice of Lamberton's letter of February 28, 1997 until March 18, 1997. (State Exhibit K.)

9. In March of 1997, after the Association was notified of the reorganization, the corporal ranks were reorganized. Fifty corporals lost their rank, were required to change the rank insignia on their uniforms and lost the title of "corporal." Thirty-two employees retained the rank and title of "corporal." Those personnel who lost the rank of corporal retained their status as labor grade 19 and became Trooper II's. Those personnel who retained their rank as corporal had their pay status increased to labor grade 20. (State Exhibit G and testimony from Association past president Copponi.) Pleadings show that the parties do not dispute that the loss of the rank of corporal for approximately fifty unit employees "was not done for any disciplinary reason related to any misconduct by any affected corporal." The Association (Complaint, para. 8) claims this loss of rank was a "demotion," that rank was a "basic term and condition of employment" (Complaint, para. 15), that the stripping of rank cannot be construed as a "reorganization" (Complaint, para. 13) and that the removal of rank in the manner described, without any disciplinary infraction, is an unfair labor practice (Complaint, para. 17).
10. Testimony by Association witnesses universally documented a loss of morale and self-esteem accompanying the rank change from Corporal to Trooper II. Trooper II's testified that non-trooper personnel did not understand the change. There was also evidence from one Association witness that he had supervised the same five people doing the same functions since 1996 while holding the ranks of Trooper II, Corporal and Sergeant.
11. Association witnesses testified that they believed the duties of "hard corporals" could be switched to and performed by "soft corporals" and vice versa. This belief was caused by comments attributed to the former Executive Major, Thomas Kennedy, now retired, who is said to have suggested complete fungibility by his statement that "a corporal is a corporal is a corporal." (See testimony of Association witnesses Copponi, Massaro, Lord and Winters.) Likewise, there was consensus in the belief that the rank of corporal was a permanent rank. (See testimony of Wiggin, Copponi, Lord and Symmonds.) Association witness Wiggin

said this was the first reduction in rank of personnel in the 65 year history of the organization which was not the consequence of a disciplinary event. The Association cited RSA 106-B:5 for the proposition that no unit employee could be demoted except for cause.

12. The State takes the position that the change in rank from Corporal to Trooper II for the individuals involved was not a "demotion." Personnel Rule 101.20 defines "demotion" as "a transfer of an employee from one position to another position having a lower salary grade." Personnel Rule 101.46 defines "reclassification" as "a determination by the [state] director [of personnel] that a position be assigned to a specific classification different from the one in which it was previously placed." Personnel Rule 101.44 defines "reallocation" as a determination by the director [of personnel] that a class specification be reevaluated in relation to the position classification plan established under RSA 21-I:42 II." The Director of Personnel, Virginia Lamberton, testified that the action removing the grade of corporal from some fifty unit employees was not a "demotion" but rather a "reclassification" under the personnel rules. None of the individuals who lost the rank of corporal and became Trooper II's lost pay or benefits while existing or continuing corporals were reclassified upward to labor grade 20. She also testified that agency heads cannot insure or promise labor grade stability over or superior to the reallocation and reclassification procedure found in the personnel rules.

DECISION AND ORDER

Our review of the circumstances convinces us that the action complained of relative to the affected corporals was not a demotion within the meaning of the personnel rules. None of them lost pay or benefits and none was transferred to a lower salary grade. The action complained about is within the authority of the State during the course of a reclassification, also as defined by the personnel rules. Likewise, since there was no demotion, there can have been no violation of RSA 106-B:5.

The Association would have us find that elimination of the grade of corporal was a refusal to bargain and a unilateral change in working conditions. To so find, we must also find that rank in general, and being a corporal in particular, was a working condition. While credible Association witnesses have valid reasons for believing

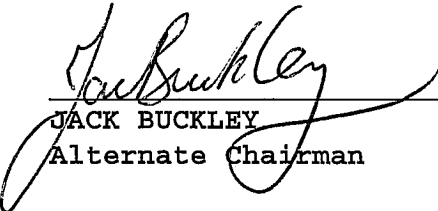
the rank of corporal was a permanent grade and totally fungible with other corporals, the record cannot support a finding that being a corporal is a working condition. Pay and benefits have been negotiated by the parties, job titles have not. There has been no change in pay or benefits resulting from the acts complained of.

This case results from an unfortunate convergence of circumstances, namely, reliance on statements relating to the supposed similarity in status of all corporals, whether "hard" or "upgraded," the historic belief that the rank of corporal was "permanent," and the assumption that RSA 106-B:5 prevented any modification in rank structure unless precipitated by disciplinary proceedings. Rather than explain these mistaken assumptions, management proceeded with the reorganization in a way which not only resulted in this litigation but also has been universally recognized by the affected employees as being demoralizing. We believe this to have been a poor management decision which, long term, results in diminished effectiveness for the labor-management relationship between the parties. This is unfortunate since it appears that the morale of the division could have been maintained and hard feelings avoided entirely by letting this matter correct itself by attrition rather than by reorganization.

Notwithstanding our feelings about other methodology which might have been utilized to handle the corporal issue, the pivotal consideration in this case must be the key language in RSA 273-A:1 XI relating to managerial policy. The statute provides that it is within the "exclusive prerogative of the public employer" to determine its programs and methods and its *organizational structure*. The reorganization described to us by the State's witness and documentary evidence (State Exhibits B through G, inclusive) show a reorganization within the authority of RSA 273-A:1 XI. The ULP is DISMISSED.

So ordered.

Signed this 13th day of MARCH, 1998.


 JACK BUCKLEY
 Alternate Chairman

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