



NH Supreme Court affirmed this decision on March 12, 1997, Supreme Court Case No. 95-870.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SCOTT SMITH, et als.

Petitioner

v.

CITY OF LACONIA

and

LACONIA PROFESSIONAL
FIREFIGHTERS, LOCAL 1153,
IAFF

Respondent

CASE NO. F-0103:13

DECISION NO. 95-66

APPEARANCES

Representing Scott Smith, et als:

Jay C. Boynton, Esq.

Representing City of Laconia:

James Burke, Esq.

Representing Laconia Firefighters:

Shawn Sullivan, Esq.

Also appearing:

- Dave Austin, City of Laconia
- George Landry, City of Laconia
- Bob Landry, City of Laconia
- David Monasty, Scott Smith, et al.
- Alan Barrett, Scott Smith, et al.
- David Jensen, Scott Smith, et al.

Richard Judkins, Scott Smith, et al.
 Scott T. Smith, Scott Smith, et al.
 Maruice Simpson, Scott Smith, et al.
 Seely White, Laconia Firefighters
 Michael Drake, Laconia Firefighters
 Neil A. Eastman, Laconia Fire Department
 Neil Young, Laconia, New Hampshire
 Seth Wheeler, Laconia Evening Citizen

BACKGROUND

Scott Smith, David Monasky, David Jensen, Alan Barrett, James LeRoy (now deceased) and Maurice Simpson (collectively "complainant") filed unfair labor practice (ULP) charges against the City of Laconia (City) and the Laconia Fire Fighters Association (Union) on March 22, 1995 alleging violations of RSA 273-A:5 I (g), (h) and (i) relative to a unilateral change in working conditions and a refusal to bargain and violations of RSA 273-A:5 II (e) and (f) resulting from the union's unwillingness to pursue the grievance and provide fair representation through arbitration, respectively. The City filed its answer on March 22, 1995 while the Union filed its answer on April 6, 1995. This case was heard by the PELRB on June 6, 1995 after a continuance sought by and granted to the union for a prior hearing date on May 11, 1995.

FINDINGS OF FACT

1. The City of Laconia is a "public employer" of personnel in its Fire Department within the meaning of RSA 273-A:1 X.
2. The Laconia Professional Fire Fighters Association, Local 1153, IAFF, AFL-CIO, is the duly certified bargaining agent for fire fighters employed by the City.
3. The complainants, with the exception of James LeRoy who is now deceased, are fire fighters employed by the City and within the bargaining unit represented by the Union.
4. The City and the Union are parties to a collective bargaining agreement (CBA) which contains a grievance procedure at Article XV thereof. Article XV, Section 2 provides that "employees shall inform the

union grievance committee of all individual or collective grievances. The union grievance committee shall be responsible to investigate and present grievances." Such a grievance was presented to Seely White, Chairman of the Grievance Committee, on July 13, 1994. The three-step grievance procedure of Article XV involves: (1) employee discussion with the union grievance committee and if this does not settle the matter, presentation to the employees' supervisor, (2) appeal of an unsatisfactory resolution to the chief or deputy chief through the union grievance committee, and (3) appeal of an unsatisfactory answer to the city manager, again through the union grievance committee. Steps 2 and 3 above contemplate a hearing by the party to whom the unsatisfactory resolution has been appealed.

5. Under the administration of former Fire Chief Richard Judkins, who retired after 5 1/2 years as Chief on June 29, 1994, it was common to award "department days" or award days" to recognize certain accomplishments of fire fighters, from the naming of equipment to participation in safety or community projects (e.g. Bike-a-thon, United Way participation, helpful and cost savings suggestions). One such awarding of "department days" was to those volunteers who staffed the hospital tent during the 1993 Motorcycle Weekend. The practice of granting award days dates back to 1980 under Chief Louis Wool and has been used as a recognition tool since then.
6. Judkins testified that there were insufficient volunteers to run the hospital tent during the 1994 Motorcycle Weekend and that the Union had argued that employees who worked the event should be taken from the overtime list and paid at overtime rates. This prompted Judkins to put out a memo that 1994 work at the tent would be strictly voluntary. After the 1994 Motorcycle Weekend, on June 21, 1994, Judkins issued two "award days" to eight (8) individuals to recognize his appreciation for their volunteer activities during Motorcycle Weekend.
7. After Judkins retired, then Acting Chief Richard Landry became concerned with the granting of award days by Judkins on June 21st because Judkins gave

volunteers two award days for each day worked while salaried and assigned unit members only received overtime pay at the time-and-a-half rate. Landry feared a grievance and/or Fair Labor Standards Act complications. After receiving a memo expressing concern from Union President Michael Drake on July 6, 1994, Landry issued a memo revoking the award days. This revocation covered only award days for the 1994 Motorcycle Weekend volunteer work and did not impact or revoke any award days given for other accomplishments. There is no known history of granted award days ever having been revoked by Landry or any other Chief or City Manager for any purpose.

8. On July 13, 1994, "concerned members" of the fire department, namely the complainants herein, filed a grievance with Seely White, chair of the union's grievance committee.
9. A union meeting held on August 12, 1994 considered the complainants' grievance. That meeting defeated a motion to process this grievance through the grievance committee by a vote of 5 for, 9 against and 4 abstaining.

DECISION AND ORDER

After examining the facts of this case, we find that there has been an open and uncontested policy of granting "award days" or "department days" which has been in effect for a number of years. Finding No. 5. Such a practice occurred during the 1993 Motorcycle Weekend. There is no history of those "award days" ever having been revoked, once granted, during the years the foregoing policy has been in effect.

Similarly, there is no evidence in this case that the award days in question were falsely obtained or erroneously awarded. They were conferred upon the eight intended recipients for the purposes stated on June 21, 1994.

Finally, there is no evidence of conduct, or misconduct, either during the 1994 Motorcycle Weekend or between the date the days were awarded (June 21, 1994) and the date they were revoked (July 6, 1994) which would be cause for that revocation. Accordingly, that revocation on July 6, 1994 constituted an inappropriate unilateral change in an awarded benefit/working

condition which, in turn, violated past practice under the CBA and is prohibited by RSA 273-A:5 I (h).

The award days in question shall be reinstated to the complainants forthwith. All other allegations of unfair labor practices are DISMISSED.

So ordered.

Signed this 22nd day of SEPTEMBER, 1995.


EDWARD J. HASELTINE
Chairman

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