

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LCCAL 1045, CONCORD, N. H.

Complainant

and

CITY OF CONCORD, NEW HAMPSHIRE

Respondent

CASE NO. F-0101:2

DECISION NO. 780057

APPEARANCES

Representing the Fire Fighters Local 1045:

Vincent P. Dunn, Esq., Counsel  
Russell F. Hilliard, Esq.  
George Dickson, President Local 1045  
Edward Joaquin, Local 1045

Representing the City of Concord, N. H.:

Paul F. Cavanaugh, Esq., City Solicitor  
Clayton Higgins, Chief  
William H. Wilson, Jr., Esq.

Also present:

Joseph M. Wescott, Concord Fire Department  
Edward O. Constant, Concord Fire Department

BACKGROUND

The Board at its December 6, 1978 meeting took the following actions after a complete and detailed hearing conducted on October 26, 1978 to consider the unfair labor practice charges filed against the City of Concord by the IAFF, Local 1045, alleging that the City had unilaterally changed the composition of the bargaining unit and continually attempted to breach the existing agreement.

The order issued on December 8th read as follows:

"The Board finds that the subject of changing the duties of a member of the bargaining unit (captain) is properly the subject of negotiations and hereby remands this case to the parties with the direction that this subject matter be negotiated between the parties."

This order was a result of a unanimous vote of the Board taken on December 6, 1978 and issued on December 8, 1978. Subsequent to the issuance

of this order, Vincent P. Dunn, Esquire, Counsel for Local 1045 filed a request for findings in this specific case.

The matter of the Concord Fire Department reorganization was before the Merrimack County Superior Court on September 15, 1978, and Justice Souter remanded the matter to PELRB who accepted briefs from the parties involved and scheduled a hearing to receive oral and written evidence.

At the October 26, 1978 hearing, PELRB accepted from Attorney Dunn, Counsel for the Fire Fighters' Local, a request for findings which are as follows:

1. The negotiations between Local 1045, IAFF, and the City of Concord did culminate in a collective bargaining agreement effective April 1, 1978 and was based on certain classified positions in the bargaining unit. Testimony at the hearing indicated that the U. S. Civil Service Commission Study had been in the background for some time and the knowledge of its suggestions was well-known to both parties.
2. The Board finds that during the negotiations, the City negotiating team did in fact refuse to accept any wage proposal unless said proposal paralleled the U. S. Civil Service Commission Study. The referenced study set certain wage guidelines which the City concluded were the parameters of negotiations. Wages are clearly the subject of negotiations as set forth in RSA 273-A.
3. The collective bargaining agreement incorporated a wage scale for the classifications of fire captain, fire lieutenant and fire fighter.
4. The collective bargaining agreement was approved by the City of Concord effective April 1, 1978.
5. Based on evidence before the Board and testimony submitted, the Civil Service classification study was adopted by the City Council effective April 2, 1978.
6. At the time of conclusion of the contract and its effective date, the bargaining unit included six (6) captains in the Concord Fire Department.
7. Based on testimony and evidence, the captains referred to above exercised duties that were consistent with the Civil Service classification both prior to the approval of the contract and for a period of time thereafter.
8. The City of Concord through its City Manager did implement a reorganization plan of the Fire Department on September 23, 1978. PELRB finds that the organizational structure of the City is purely that of management prerogative.

9. Based on the testimony presented, as part of the reorganizational plan, certain deputy fire chiefs assumed administrative responsibilities.
10. Fire captains, Potter, Joaquin and Knowlton, temporarily assumed the duties of deputy chiefs also as part of the reorganization and were paid certain monies for the performance of the additional duties.
11. The three captains named above remain in their fire captain classification.
12. By the City's admission, the three captains did in fact assume certain duties and responsibilities of deputy chiefs although this was to be a temporary situation. Under normal circumstances such is permitted in the preponderance of the collective bargaining agreements on file with this Board. However, to permanently make a change of the duties of individuals in the bargaining unit should be the subject of negotiations.
13. The named three captains are not allowed to reject the benefits of their seniority and such disallowance abridges the collective bargaining agreement, Article IV, Section 4.
14. No evidence was presented that a classification had been developed where individuals performed responsibilities outside of that bargained for. This area constitutes a gray area of management's rights versus union rights. The City cited in its argument, decisions by PELRB rendered with respect to the Manchester Fire Fighters' case wherein this Board denied the right of the Fire Fighters' Union Local 856 to insist in its negotiations that the staffing requirements be determined. PELRB held that the staffing requirements were strictly management's prerogative in accordance with 273-A.
15. The City of Concord did prior to completion of negotiations refuse to negotiate job classifications and continued to refuse to negotiate job classifications and based their position on the City's adoption of the Civil Service Commission Study.
16. PELRB declines to make a finding on whether the violations relate to the application or interpretation of the collective bargaining agreement.
17. The Board finds that the City of Concord has committed an unfair labor practice by changing the structure of the bargaining unit and holds that the matter should be the subject of negotiations between the parties.

Mindful of the fact that negotiations do not require the agreement of either party or the agreement of one party to the demands of another, the Board feels that mutual negotiations covering these subjects provide the best way to harmonious employee-employer relations.

18. Comments in Finding No. 17 apply.
19. Finding No. 17 also applies to requested finding in this instance.

BOARD DECISION AND ORDER

The Board finds that while management prerogatives are somewhat broad, (see N. H. Supreme Court, No. 7836, SEA v. PELRB, December 29, 1978), as further outlined in NH 7836, dealing with SEA and the State Negotiating Committee, that in the interest of harmonious relations between the bargaining agent and the City, subject of any change in the structure of the bargaining unit and the duties involved should and must be the subject of good faith negotiations.

It is obvious that the conditions of employment are without question the subject of negotiations. Further, a change of duties within a bargaining unit constitutes a change in conditions of employment and should therefore be mutually discussed.

With the above findings, the Board reaffirms its decision and order of December 8, 1978 which read, as follows:

The Board finds that the subject of changing the duties of a member of the bargaining unit (captain) is properly the subject of negotiations and hereby remands this case to the parties with the direction that this subject matter be negotiated between the parties.



EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 26th day of February, 1979

By unanimous vote. Chairman Haseltine presiding, Members Cummings and Moriarty present. Also present, Board Clerk, Evelyn LeBrun