



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS	:	
(I.A.F.F.), LOCAL 2620	:	
	:	
Complainant	:	CASE NO. F-0113:17
	:	
v.	:	DECISION NO. 88-79
	:	
DERRY FIRE DEPARTMENT	:	
	:	
Respondent	:	

---

APPEARANCES

Representing I.A.F.F., Local 2620:

Robert T. Clark, Esq., Counsel

Representing Derry Fire Department:

Gary W. Wulf, Chief Negotiator  
James J. Cote, Fire Chief

Also appearing:

Ronald D. Gagnon, Deputy Chief  
Harvey D. Cote, Firefighter  
Randall N. Chase, Firefighter  
Geoffrey Barnett, Firefighter  
Ronald O'Keefe, Lieutenant  
Mark E. Sheehan, Private

BACKGROUND

On February 3, 1988, Local 2620 IAFF (Union) filed improper practice charge against the Derry Fire Department (Dept.) alleging that a unilateral change was adopted regarding the salary schedule for acting Lieutenant of the Dept. without negotiating with the union and in so doing violated 273-A:15 I (e). As a remedy the Union requested a finding of improper practice and an order to the Town to negotiate with the Union on the salary of acting Lieutenant.

In an opening statement Wulf for the Dept. stated that the position of acting Lieutenant had been in existence for more than 10 years.

Hearing in this matter was held at the PELRB Office on May 31, 1988 in Concord, New Hampshire.

Witness Lieutenant Ronald O'Keefe testified as to negotiations regarding both Unit A and Unit B, and that there was a controversy as to the position of acting Lieutenant. Unit A is made up of Firefighters and Technicians,

Advanced First-Aid Red Cross card holders and Dispatchers. Unit B is composed of Captain, Lieutenants, MS Supervisors, Fire Prevention Officers and Dispatch Supervisor. He also stated that a firefighter had been promoted to the position of acting Lieutenant in response to a posted notice of vacancy and that a controversy existed during negotiations on the unit membership of acting Lieutenant Tabor because of his acceptance of the acting Lieutenant's position and that during those negotiations the subject of pay scale for acting Lieutenant was never discussed but during negotiation, wage scales had been discussed for both units. (Lieutenant Tabor prior to promotion to acting Lieutenant was a member of Unit A Firefighters Local 2620).

Chief James Cote testified that since April of 1985 rates for acting Lieutenant had never been negotiated and that in 1977 a probationary period for one year for acting Lieutenant prior to becoming a full Lieutenant was instituted and resulted in a 5% differential between the highest firefighter rate and the full Lieutenant rate. The objective of the title of acting Lieutenant was specifically to determine the qualification of the appointee to fill the duties of a Lieutenant. Evidence was presented on the Department's policy of promoting from within but the policy did not prohibit the Department from hiring from the outside.

Discussions followed between Board Members, Counsels and the Chief regarding the grievance procedure, probation periods for promotions to Captain, and steps in the classifications of positions.

An Arbitrator's award in a grievance filed by Lieutenant Tabor was introduced which resulted in determining the unit status of a Lieutenant Tabor during his term as acting Lieutenant. Award held Tabor to be a member of Unit A until such time as he became a full Lieutenant.

Attorney Clark for the Union stated the Town created the acting Lieutenant position for its own convenience and if sanctioned by PELRB would create a mockery of 273-A. The Union's position is that the acting Lieutenant is in reality a full Lieutenant and therefore should receive Lieutenant's pay and that the probationary period should be used only to see if they can perform satisfactorily.

Wulf for the Department countered the legislative intent by specific language in 273-A recognized and excluded probationary employees. (PELRB notes the language of 273-A regarding probationary employees and agrees that it's usage is quite clear).

#### FINDINGS OF FACT

After review of all the testimony and evidence both oral and written, the Board finds as follows;

1. The Union and Town had working knowledge of the Acting Lieutenant status when there were discussions on the number of Acting Lieutenant positions to be filled.
2. The subject of salary scale for this designated position had never been placed on the table during negotiation sessions although it could have been the subject of negotiations by either party.

DECISION AND ORDER

Having found no improper practice, the Board hereby DISMISSES the improper practice charge.

Signed this 14th day of November, 1988.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman, Richard W. Roulx and James C. Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.