



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER PUBLIC ADMINISTRATORS ASSOCIATION :

Petitioner :

v. :

RICHARD E. LAK, CITY MANAGER :

Respondent :

CASE NO. M-0574:3

DECISION NO. 90-11

APPEARANCES

Representing the Dover Administrators Association:

Donald E. Mitchell, Esq., Counsel

Representing City Manager Richard E. Lak:

Scott E. Woodman, Esq., Counsel

Also appearing:

Charles D. Reynolds
Reynold Perry
Dave Bibber
Tom Scharff
Jesse Andrew Galt

BACKGROUND

This is a rehearing in this case granted by the Board on November 14, 1989 as a result of a Petition for Rehearing by the Dover Public Administrators Association. The background of this case is fully set forth in Decision No. 89-55 and can be referred to for purposes of identifying the matters before the Board. Additional testimony was accepted at the November hearing.

FINDINGS OF FACT

1. On November 13, 1985, the City Council authorized the City Manager to enter into a Memorandum of Understanding (agreement-contract) with the Dover Public Administrators' Association (DPAA). The bargaining unit consisted of various municipal department heads.

Section of the agreement pertinent to the issue at hand are "Section V.D." dealing with salaries and Section IX-A setting the procedures for future negotiations.

Section "V.D. Provided further that effective December 1, 1986, members salaries and salary ranges shall be adjusted by five percent (5%) and annually thereafter members salaries and salary ranges shall be adjusted at a minimum by a Cost of Living amount consistent with the maximum awarded other City employees, exclusive of the Dover School Department.

Section IX. A. "This Memorandum of Understanding shall be in full force and effect commencing July 1, 1985, unless provided specifically in any Article hereof, and shall continue then from year to year unless otherwise provided in any sections hereof or written notice of desire to cancel, modify, or terminate the Memorandum of Understanding is served by either party on the other at least one hundred and twenty (120) days prior to budget adoption date set forth in Section VI: 5 of the City Charter, City of Dover, New Hampshire or any amendments thereto."

Salary adjustment made under this agreement as follows: 5% adjustment to salaries effective July 1, 1986; 5% effective July 1, 1987; 4% effective July 1, 1988 and ending June 30, 1989. To these salary adjustments, a certain percentage in the form of cost of living adjustment was made.

2. In July of 1988, the City entered into a contract with the Dover Professional Fire Officers Association. This contract awarded salary adjustments of six percent effective January 3, 1988 plus a specific cost of living adjustment of four percent which was added for a total of ten percent effective January, 1988. The Fire Officers were awarded a salary adjustment of six percent and a cost of living adjustment of three percent for a total of nine percent effective July 1, 1989.
3. The Dover Firefighters Local 1312 was awarded certain salary increases in '87, '88 and '89 all of which were complicated in that various steps in the salary scale were eliminated and new ones added as well as a percentage added to the scale which did not specify which portions of which pay increases were strictly cost of living. Since the DPAA Agreement specifies that their salaries shall be adjusted "...at a minimum by a cost of living amount consistent with the maximum awarded other City employees, exclusive of the Dover School Department", the City's desire to tie in the increases to be granted the DPAA strictly to the Dover Professional Fire Officers' Association must fail.
4. On July 19, 1988, DPAA filed a grievance with the City Manager requesting the same salary increase awarded the Dover Fire Officers' Association, but were nonetheless entitled to that awarded other employees.
5. The DPAA's bargaining agreement sets forth a grievance procedure which involved the City's personnel policy. That policy establishes a line of appeals including the City Manager who has the ultimate decision with respect to grievances arising in this Contract. In fact, the City Manager, since appeals of his

decision are presented to the Personnel Appeals Board whose decisions are not binding on the City Manager, has total authority under the appropriate Dover Charter and Ordinance provisions to settle all grievances arising out of personnel matters in the City of Dover.

6. City Manager Reynold Perry, on August 3, 1988, rendered his grievance decision stating that salaries of DPAA would be increased by a 5% increase to be effective January 1, 1989 and also a 9% effective July 1, 1989.
7. The City Manager properly exercised his authority under the powers granted him by the City Charter and City Ordinance in the manner he thought reasonable in the circumstances.
8. The City Manager did not exceed his authority as granted by the Dover City Charter and Ordinances and Policies and the collective bargaining agreement which had been approved by the City Council.
9. While it might have been advisable, there is no requirement either by practice or law which requires the City Manager to communicate the resolution of every grievance to the City Council.
10. The decision of the City Manager in settling the matters before him was rendered without regard to the continuation or renegotiation of the collective bargaining agreement solely as a resolution to the grievance presented to him based on the Contract's requirement to pay the DPAA the maximum cost of living raise paid to other employees.
11. Whether or not the City Manager made a correct decision is not for the Board to decide but whether or not he or she had the authority to make that decision. Based on the documents produced at the initial and Rehearing of this matter the Board has concluded that the City Manager did in fact have that authority. Whether or not it was a correct decision on his part was a matter between Mr. Perry and the Council and certainly employees cannot be held accountable by the City Council for the acts of their agent.
12. We emphasize the position set forth in Paragraphs 6 through 8 of Member Molan's earlier Dissent that the City failed to exercise their right to renegotiate the annual agreement on a timely basis. Notwithstanding the contract language, the statutory provision with respect to notification is mandatory in nature. The City at the Rehearing indicated that they relied on Appeal of International Association of Firefighters AFL-CIO Local 1088, 123 NH 404 (1983), however the Board does not find that persuasive. The issue of the mandatory nature of the statutory provision of notice was not addressed before the Court but rather a more limited issue was brought for their review. It cannot be fairly said from the Court's decision that the implication of the mandatory subject was either raised or decided at that time. This being the case, the City's reliance on excusing their compliance with the grievance decision cannot hold.

DECISION AND ORDER

After re-examining all the exhibits, testimony and evidence in this matter the Board finds:

- A. The City Council has committed an unfair labor practice against the Dover Public Administrators Association as to its disposition of wages authorized by the City Manager's decision and resolution of the grievance filed by the DPAA.
- B. The City is ordered to pay the pay increases as authorized by the City Manager as part of his decision in the underlying grievance.
- C. The City is to notify the Board of its compliance with this Order within thirty days after its issuance.

Signed this 17th day of January, 1990.


EDWARD J. HASELTINE
Chairman

By majority decision. Members Richard W. Roulx and Richard E. Molan voted as above. Chairman Edward J. Haseltine reaffirming his original decision No. 89-55 as issued on August 17, 1989. Also present, Executive Director, Evelyn C. LeBrun.