



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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CITY OF SOMERSWORTH :

Complainant :

v. :

SOMERSWORTH POLICE ASSOCIATION :

Respondent :

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CASE NO. P-0705:4

DECISION NO. 90-34

#### APPEARANCES

##### Representing the City of Somersworth:

Daniel M. Cappiello, Esq., Counsel

##### Representing the Somersworth Police Association:

Edward M. Kaplan, Esq., Counsel

##### Also appearing:

Chief Patrick L. Cote  
Philip L. Munck, City Manager  
Officer Daniel Gagne

#### BACKGROUND

This is an unfair labor practice complaint filed by the City of Somersworth against the Somersworth Police Association.

The Somersworth Police Association represents police officers in that city and as such were covered by a collective bargaining agreement that was executed on or about July 1, 1987 and continued through June 30, 1989. In October of 1988, the Association gave notice to the City of its intent to renegotiate the terms of the agreement and thus to terminate their collective bargaining agreement effective June 30, 1989. The parties were unable to reach an agreement prior to the expiration and pursuant to the Board's Sugar River doctrine, the current collective bargaining agreement continued in effect. Due to the protracted negotiations, the vice president of the Somersworth Police Bargaining Unit sent a letter to Captain Marc Perrault dated October 19, 1989 wherein the union's representative indicated that as a result of the then-current bargaining impasse with the City, the union had voted as a body not to honor any additional requests for extra duty functions outside of the regularly scheduled tours of duty and emergency overtime.

The City argued that the collective bargaining agreement which provides for payment of private duty assignments is augmented by the union's pledge in the collective bargaining agreement under Article VII, "Continuity of Operations," wherein the Association agreed not to engage in or condone any strike, work stoppage or other concerted refusal to perform any assignments on the part of any employees represented by the bargaining unit. The City argued that the Labor Relations Act makes it unlawful for public employees to engage in a strike or other form of job action and that New Hampshire case law supports their theory that the Somersworth agreement is the type of duty contemplated by the concerted activity prohibition.

On the other hand, the Association argues that the contract only required the City to offer private duty details to members of the bargaining unit and that this is a voluntary duty which may be refused by the officers. If this dispute arose over the individual refusal of police officers in Somersworth to work this what may be called voluntary overtime, it would be a different matter. The Association's argument overlooks the most salient fact in that it was the union as a body and not the individuals who make up the Association that indicated its refusal to participate in serving in these extra details. Thus, the Association has clearly foregone its pledge not to participate in any concerted activity during the term of the contract. Therefore, the Board must find for the City of Somersworth.

Hearing in this matter was held at the PELRB office in Concord, New Hampshire on February 6, 1990.

#### FINDINGS OF FACT

1. A collective bargaining agreement exists between the City of Somersworth and the Somersworth Police Association.
2. Protracted negotiations on a successor collective bargaining agreement had occurred between October of 1988 and October of 1989.
3. The Somersworth Police Association took a vote to decline to participate in extra or private duty details and communicated such to the representatives of the City of Somersworth.
4. That in fact, the members of the Somersworth Police Association have and do continue to refuse to accept these details. The refusal to accept outside or private duty details was directly linked to the negotiations impasse which had occurred and was meant to try and influence the negotiations.
5. The collective bargaining agreement in force at the time prohibited the Police Association from engaging in any conduct that would disrupt continuity of operations.
6. The conduct of the Somersworth Police Association in this instance had disrupted the continuity of the police department's operations in violation of the contract and is a violation of RSA 273-A.

DECISION AND ORDER

The PELRB finds the Somersworth Police Association to have committed unfair labor practices pursuant to RSA 273-A:5, II (d). The Board orders the Somersworth Police Association to immediately cease and desist from such further activity and to report its compliance within ten (10) days to the Boards' Executive Director.

Signed this 26th day of April, 1990.

  
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JACK BUCKLEY  
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and Richard E. Molan, present and voting.