



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SALEM POLICE RELIEF :

Petitioner :

v. :

CASE NO. P-0715:14

TOWN OF SALEM, N.H., JAMES ROSS, IN :
HIS CAPACITY AS CHIEF, and HOWARD :
GLYNN, IN HIS CAPACITY AS CHAIRMAN :
OF THE BOARD OF SELECTMEN :

DECISION NO. 90-120

Respondent :

APPEARANCES

Representing Salem Police Relief:

Theresa DeNafio, Esq., Counsel

Representing Town of Salem:

Robert Leslie, Esq., Counsel

Also appearing:

D. Micklon, Selectmen
David B. Tilton, Jr., Selectmen
Howard C. Glynn, Chairman
Robert Ciandella, Esq., Town Attorney
Det. Mark Pierson
Officer Joseph Swift
Devin P. Kineen, Union President
Lt. Foster
Patrolman Paul Marchand
Det. Mark Cavanaugh
Det. Roger Beaudet
Lt. Donald LeBlanc
Chief James Ross

BACKGROUND

This case involves a charge of unfair labor practice for terminating the position of case management officer allegedly because of staffing demands and budgetary constraints, reassigning the officer back to patrolman and duties of "case management" assigned to a non-union member under another title contrary to past practice.

Counsel for the Town admitted all of the details of the charge except for the conclusion that the actions constituted unfair labor practice within the meaning of RSA 273-A:5.

Hearing in this matter was held in the Town office in Salem on July 19, 1989 with all parties represented.

FINDINGS OF FACT

1. The certified unit for the Town of Salem, Police Department, as amended April 19, 1989, reads as follows:

UNIT: All full-time Patrolmen, Sergeants and Dispatchers.
Exclude: Chief, Deputy Chief, Lieutenants, Special Officers and the Animal Control Officer.

and no further modification issued.

2. On October 8, 1986, Personnel Director, Nicholas Manolis advised union president Robert Giusti, by letter, that the new case management officer position would be filled in the near future and stated "For the record, the position will be included in the bargaining unit."
3. The Case Management Officer position was posted on October 8, 1986 indicating, rate of pay, hours of work, length of service, testing process and application procedures.
4. RSA 273-A grants to the public employer the authority to direct and assign its employees, within the organizational structure of its department unless constrained by contractual agreements.
5. The CBA between the parties contained no such constraints.
6. Article IV of the CBA delineates management's rights as agreed between the parties.
7. The Personnel Director took unilateral action by including the position of case management officer in the bargaining unit without negotiations and without request for modification under 273-A.
8. The above findings have been substituted for the parties requests.

DECISION AND ORDER

The Board declines to find unfair labor practice on the part of the Town of Salem and remands the issue back to the parties for future negotiations and resolution.

Signed this 6th day of November, 1990.


EDWARD J. HASELTINE, CHAIRMAN

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.