



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

v.

TOWN OF NORTH HAMPTON

Respondent

CASE NO. M-0646:1

DECISION NO. 92-135

APPEARANCES

Representing Teamsters Local 633 of N.H.:

Thomas Noonan, Business Agent

Representing Town of North Hampton:

Robert R. Tawney, Chief Negotiator

Also Appearing:

Mary B. Herbert, Town of North Hampton
Chief Frank Beliveau, Town of North Hampton
Bruce Golden, Teamsters Local 633 of NH
Brian Page, Teamsters Local 633 of NH

BACKGROUND

On April 1, 1992, Teamsters Local 633 of New Hampshire (UNION) filed unfair labor practice (ULP) charges against the Town of North Hampton (TOWN) alleging violations of RSA 273-A:5 I (a) and (e) because of unilateral changes in working conditions. The Town filed its answer on April 16, 1992, denying the commission of any unfair labor practice. This matter was heard by the PELRB on June 23, 1992.

FINDINGS OF FACT

1. The Town of North Hampton is a public employer of police officers and other employees as defined by RSA 273-A:1 X.

2. Teamsters Local 633 of New Hampshire is the duly certified bargaining agent of police officers employed by the Town. Since the union became certified on December 5, 1991, no collective bargaining agreement (CBA) has been concluded between the parties.
3. The Police Department has "Revised Police and Procedures" dating to May 27, 1981, which was reviewed and approved by the selectmen of the Town on June 3, 1991. (Union Exhibit No. 2) Sections IV and V of the "Administrative" portion of the Policy and Procedures provide "regulars to have first preference, by seniority, in covering shifts available due to sick leave, vacation leave, or any authorized leaves, i.e., officer in school [,] etc. Also regulars to have preference, by seniority [,] for various extra work as: 1. private parties and functions, 2. construction details, 3. drive-in theater, 4. whatever other non-budgeted items that may come up." It also provides that special officers "have first preference, by seniority, in covering budgeted special details as: beach patrol, extra cruiser, meetings [,] etc. If no specials are available [,] regulars may work these details at special rate of pay." The present police chief, on the job for only four (4) months, had not seen the Policy and Procedures document prior to the hearing before the PELRB.
4. The Town has a "Personnel Policies and Procedures Manual" consisting of seven (7) pages which was approved by the selectmen on January 8, 1990. It contains an informal, three-step grievance procedure involving: (1) discussion with department head, (2) written submission to department head, and (3) filing with the selectmen requesting a hearing.
5. By letter of March 3, 1992, the Union requested of the Town that "the current Personnel Policies and Procedures remain in effect for the duration of negotiations" and that "...wages, health insurance, sick leave, vacations and any other compensated benefits should remain in status quo during the year 1992."
6. The present police chief was hired effective March 9, 1992. He testified that he was aware that seniority played a role in the assignment of overtime. Shortly after he was hired, he was advised by the selectmen to monitor and restrict overtime because of 9% in spending cuts imposed at town meeting on March 12, 1992. On or before March 18, 1992, the Chief decided to and did

change the manner of assigning overtime by giving it to part-time or junior officers instead of full-time more senior officers.

7. On March 18, 1992, the Chief filled a twelve hour shift vacancy with two officers, each of whom worked six hours. Each of these officers was either junior in seniority to Deputy Chief David Hunt, a bargaining unit member, or was not a regular officer.
8. This ULP followed on April 1, 1992 alleging the March 18, 1992 occurrence along with complaints of similar departures from the departmental Policy and Procedures alleged to have occurred on March 25, 1992 and March 26, 1992. By answer and testimony, the Town claims no part-time (special) officers worked on March 18, 1992 or March 26, 1992 and that no overtime was offered on March 26, 1992.

DECISION AND ORDER

The record is clouded by discrepancies as to exactly what occurred on March 18, 1992 [i.e., whether a special or regular officer(s) were used] and the statement that no overtime was offered on March 26, 1992. Notwithstanding these discrepancies, there is ample evidence that the Town and/or its agents materially changed working conditions by its unilateral determinations and actions relative to the assignment of overtime in March of 1992. This Board has long recognized that the use of overtime is a managerial prerogative under RSA 273-A:1 X1. However, once management has decided to utilize overtime, then the manner in which it is assigned (whether by seniority, department, shift or otherwise) is a mandatory subject of bargaining. The unilateral changes by management in existing policy violated the obligation to bargain in good faith and thus constituted an unfair labor practice under RSA 273-A:5 I (e). There are mitigating circumstances in this case, certainly as far as the new Chief's lack of familiarity with the Policy and Procedures is concerned. We are cognizant of this as well as the fact that the Selectmen reviewed and approved that document as recently as June 3, 1991.

By way of remedy, we find and direct that:

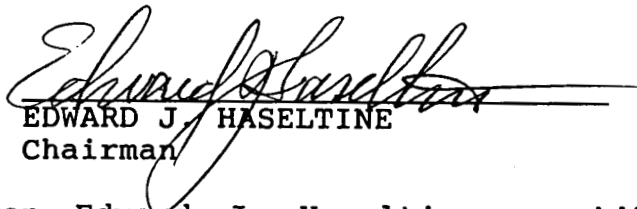
1. The Town's conduct constituted an unfair labor practice within the meaning of RSA 273-A:5 I (e).
2. The unilateral change in working conditions complained of in the ULP changes long-standing policies and practices impacting bargaining unit members, namely, senior

officers such as Deputy Chief Hunt.

3. Once the public employer decides it will use personnel in an overtime status, it must maintain its former policies relative to the distribution of that overtime. Thus, we direct the Town to adhere to the status quo pertaining to overtime distribution until modifications therein may have been agreed to during negotiations.
4. No back pay is awarded due to the discrepancies regarding the status of which officers performed duty on the dates in question.

So ordered.

Signed this 31st day of August, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Richard E. Molan present and voting.