



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 580

Complainant

v.

ROCHESTER POLICE DEPARTMENT

Respondent

CASE NO. P-0749:3

DECISION NO. 94-44

APPEARANCES

Representing I.B.P.O. Local 580

Judith Cohen, Esq.

Representing Rochester Police Department:

Jerome H. Grossman, Esq.

Also appearing:

- Ann M. Brideau, I.B.P.O., Local 580
- Stephen Burke, I.B.P.O., Local 580
- Donald Vittum, Rochester Police Dept.
- Ted Blair, Rochester Police Department
- J. Downey, I.B.P.O., Local 580
- Dennis Duchesneau, I.B.P.O., Local 580

BACKGROUND

Local 580 of the International Brotherhood of Police Officers filed an unfair labor practice charge against the Rochester Police Department on December 23, 1993, alleging violation of RSA 273-A:5 I (i). The City of Rochester Police Department had filed its answer on January 7, 1994. An amendment charging violation of RSA 273-A:5 I (e) was filed on April 6, 1994. No objection was made to the amendment when the matter was heard by the undersigned hearing officer on April 7, 1994.

FINDINGS OF FACT

1. The City of Rochester (City) is a "public employer" within the meaning of RSA 273-A:1 X. Through the Rochester Police Commission, it employs certified police officers and other personnel to operate the Rochester Police Department.
2. The International Brotherhood of Police Officers (IBPO) Local 580, is the duly certified bargaining agent for police officers employed by the Rochester Police Department.
3. The City and the IBPO are parties to a collective bargaining agreement (CBA). The CBA presently in effect (July 1, 1992 through July 30, 1994) makes no mention of compensatory time. Compensatory time was last addressed in the CBA covering the years 1983 to 1986.
4. The practice of allowing an employee compensation in time or money for overtime worked has been observed within the Rochester Police Department for at least 20 years prior to February, 1992, according to former Captain of Administrative Services Dennis Duchesneau, who retired in early 1992.
5. According to Detective Ann Brideau, prior to the tenure of Chief Donald Vittum, compensation for overtime taken in time rather than in money was encouraged as a cost saving measure.
6. On June 28, 1993, a memorandum was circulated to all personnel informing them that compensatory time which had accumulated would be paid off in money the next day, June 29, 1993.
7. On June 28, 1993, Officer Ann Brideau, President of IBPO Local 580 filed a grievance.
8. On June 30, 1993, Chief Donald Vittum replied that the matter was not grievable since it did not arise out of application or interpretation of the CBA and testimony indicated that the grievance was withdrawn.
9. On July 7, 1993, the Police Commission voted to eliminate compensatory time. A memorandum so stating was issued on July 8, 1993 and payment followed.

DECISION AND ORDER

Neither federal nor state law requires an employer to offer the option of compensatory time in lieu of monetary payment for overtime worked. However, once compensatory time is adopted and is in place, it becomes a working condition by practice and as such is a subject for negotiations between the parties as required by RSA 273-A: 1 XI and :3 I. A unilateral change in a past practice counted on by employees is a violation of the requirement to bargain in good faith. Professional Firefighters of North Hampton, Local 3211 v. the Town of North Hampton, Decision No. 93-06. Thus, such a unilateral change is a violation of RSA 273-A:5 I (e) and (i). Such a violation has occurred here. It is found and ordered that :

1. The Rochester Police Commission's conduct has constituted an unfair labor practice within the meaning of RSA 273-A:5 I (e) and (i).
2. The practice of allowing employees to elect compensatory time rather than monetary pay for overtime must be restored for the remainder of the contract period ending July 30, 1994. Thereafter, it shall be a subject for bargaining and its continuance will depend on the terms of a new CBA.

So ordered.

Signed this 18th day of May, 1994.



GAIL MORRISON
Hearing Officer