

FINDINGS OF FACT

1. The City of Manchester is a "public employer" of sworn police officers and other employees in its police department within the meaning of RSA 273-A:1 X.
2. The Manchester Police Patrolmen's Association is the duly certified bargaining agent for police officers employed by the City.
3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1991 through June 30, 1994 and continuing at all times pertinent hereto. Article II of the CBA contains a management rights clause which reserves to the police commission and/or chief various rights including the right to take disciplinary action, to issue and enforce rules and regulations, to exercise complete control and discretion over departmental organization, and to fulfill all departmental legal responsibilities. Article III is entitled "Employee's Rights" and provides that there will be no management discrimination against any employee "on account of membership of non-membership and no disciplinary action shall be taken against an employee except for just cause." Article III, Section 2 provides that the police commission "will not interfere with the formation, existence, operation or administration" of the union.
4. In March of 1994 rumors were circulating in the police department that the city was considering replacing police officers detailed to special duty at construction sites with non-police "flag people" as a cost-savings measure. This special duty represented a significant and anticipated portion of overall income for some police officers, the loss of which would adversely affect their life styles and ability to meet already existing financial commitments.
5. As the result of prior experiences where letter campaigns and telephone calls by union members and supporters to the City's elected political leaders were not sufficiently effective to the union's purposes, the union leadership decided to address the "flag people" issue by way of a demonstration. That demonstration occurred on Sunday, March 27, 1994 and involved gatherings which moved from the impound lot to the homes of Mayor Wieczorek and Alderman Machos, Elise and Reiniger.
6. Prior to and during the course of the demonstrations on March 27, 1994 various police officers, including

union president Edward Kelley, obtained and used police radios on Channel 3 to coordinate and direct the movements of demonstrating officers from place to place. At approximately 11:55 a.m. on March 27, 1994, Lt. Michael Tessier, the officer in charge (OIC) of the day shift, overheard a radio transmission, "Baker to Kelley." Tessier asked the dispatcher to tell Kelley to call him on the telephone, it being Tessier's intent to learn what was occurring with the Channel 3 radio transmissions. Tessier then heard Kelley's response transmission that he could not respond immediately whereupon Tessier told the dispatcher to advise Kelly that he was being ordered to call dispatch. This order was given while Kelley and other demonstrating officers were at the impound lot. There is no issue that the directive was not received or understood.

7. Kelley claims Tessier was called by car phone from the first site, the mayor's house. He and Tessier did not speak with each other at that time. Tessier acknowledges receiving a call from a demonstrating policeman, Officer Beeland, from the second site, the Machos home, at which time Tessier told Beeland to have Kelley call him on the telephone. Kelley claims to have called again approximately one hour and twenty minutes after receiving the directive (Finding No. 6) from Selectman Reiniger's house but was unable to stay on hold until Tessier concluded business on another line. At some time between one hour and thirty minutes (Kelley's testimony) and one hour and fifty minutes (Tessier's testimony) after the directive was given, Kelley, who was not on duty during the March 27, 1994 day shift, completed a call to Tessier.
8. As the result of the presence of 80 to 100 demonstrating police officers and their vehicles at the homes of the mayor and at least three Aldermen, numerous allegations were made about possible improper and/or illegal police conduct. An internal affairs investigation was ordered by Chief Peter Favreau. Favreau testified as to the results of that investigation, saying that the allegations of intimidation and improper conduct were determined to have been unfounded. The only discipline which resulted was Kelley's being cited for insubordination for failing to return the call to Tessier promptly.
9. Kelley's disciplinary proceedings, which, according to the understanding of the PELRB, were not concluded

as of the dates of this hearing, resulted from the foregoing internal affairs investigation. If internal departmental procedures requiring Kelley to appear before a disciplinary board result in discipline being imposed on him, the imposition of that discipline is grievable/arbitrable under Article III of the collective bargaining agreement (CBA) which provides that "no disciplinary action shall be taken against an employee except for just cause."

10. Article VII, Section 7, Step 6 of the CBA provides that the decision of the arbitrator shall be final and binding upon the parties as to the matter in dispute. According to the testimony and documents presented to the PELRB, there is no evidence of record that discipline has been imposed on Kelley or, if imposed, that he has exhausted his contractually provided avenues for redress under the grievance procedure.

DECISION AND ORDER

This Board has spoken to the issue of employees' access to Weingarten [420 US 251, (1975)] rights in previous cases, namely, IBPO v. City of Manchester, Decision No. 92-73 (May 4, 1992) and New Hampshire Troopers' Association, Decision No. 94-74 (August 31, 1994). By this decision, we affirm the principles and protections conferred by Weingarten and as explained in those two cases.

The issues presented to us in this case involve a different prospective from that of union representation prior to or when an employee is required to attend a meeting with a superior(s) where discipline may be imposed. This case involves a union assertion of privity and autonomy for off-duty police activities, pled as violations of RSA 273-A:5 I (a) and (g). There is insufficient evidence for us to find a violation of either of those provisions.

The union postured this case by asking us to decide such issues as whether the employer may interrogate bargaining unit employees about "official union activities" or concerning an off-duty union activity. We find that no such impermissible questioning occurred because inquiries by supervisory personnel involved, initially, use of police equipment and call signs, and, subsequently, allegations of behavior which may have involved violations of both departmental standard operating procedures (SOP's) and state statutes. In either case, the inquiries were germane to the operation of the police department and were not proved to have had any detrimental effect(s) which restrained, coerced or interfered with bargaining unit employees and/or their exercise of rights under Chapter 273-A. The union was unable to prove that the purpose of the attempted inquiry of Kelley was to disrupt organized union activities. For that matter, the union's rolling demonstrations, inclusive of the actions of its leaders,

were substantially, if not entirely, completed by the time Kelley and Tessier finally spoke with each other. Thus, we find no restraint or coercion resulting from the several supervisory attempts to reach and speak with Kelley by telephone.

This leaves only the matter of the insubordination charge lodged against Kelley. If that charge results in the imposition of discipline on Kelley, he is protected by an anticipated and negotiated appellate route through the final and binding grievance procedure of the contract. Those administrative and contractual remedies have yet to be utilized or exhausted. For this and the reasons cited in earlier paragraphs, the charge of unfair labor practice is DISMISSED.

So ordered.

Signed on this 3rd day of NOVEMBER, 1994.


EDWARD J. HASELTINE
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.
Members Richard R. Roulx and E. Vincent Hall present and voting.