



FINDINGS OF FACT

1. The City of Dover is a "public employer" of personnel employed in its police department within the meaning of RSA 273-A:1 X.
2. The International Brotherhood of Police Officers, Local 466 (IBPO) is the duly certified bargaining agent for police officers employed by the City of Dover.
3. The City and the Union are parties to a collective bargaining agreement (CBA) for the period July 1, 1993 through June 30, 1996. Unlike prior agreements, this CBA has a management rights clause at Article V which, notwithstanding that it was proposed, written and refined by management negotiators, is the product of give and take negotiations for the contract document as a whole. It provides, in pertinent part, that "the Employer hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and constitution of the State of New Hampshire and of the United States....[A]ll rights which ordinarily vest in and are exercised by public employer's [sic] except such as are specifically relinquished herein are reserved to and remain vested in the Employer. The Employer retains the right to exercise managerial policy within its exclusive prerogative to manage its affairs efficiently and economically including, but not limited to,... selection, assignment, number, direction and discipline of its personnel, to determine the methods and means of operations, to determine work schedules, work shifts and numbers of hours to be worked..." There is no reservation elsewhere in the CBA setting forth or excepting work schedules or the right to rearrange shifts, schedules or rotations from the foregoing contractual language in Article V.
4. Prior to the negotiation of the 1993-96 CBA and to May of 1995, officers were assigned to one of three relatively permanent shifts, 0700 to 1515, 1500 to 2315, and 2300 to 0715. There were exceptions to these assignments; however, when an officer completed a temporary or special assign-

ment or a school, he/she was customarily returned to the permanent shift to which which he/she was assigned prior to that temporary or special assignment. The three foregoing shifts are described in Section 16-G 2.1 (D) (2) of both the April 29, 1994 and April 7, 1995 standard operating procedures. (Joint Exhibit Nos. 5 and 6) Likewise, both SOP's contained a section 16-G.3.2 which said "nothing in this directive [namely, Section 16 taken as a whole] shall be interpreted as limiting the authority of the Chief of Police from making reassignments of personnel between the various shifts and bureaus at any time, if in his opinion, this is necessary for the proper and effective operation of the department. Such reassignments may be either temporary or permanent." The foregoing quoted provisions from the SOP are/have been promulgated by management and have not been the product of negotiations.

5. Chief William Fenniman, Jr. testified that he had been considering changes to the "permanent shift" schedule in late 1994. See memo from Capt. DeColfmacker on November 22, 1994. (Joint Ex. No. 7) Fenniman noted that he had implemented permanent shifts after becoming chief in 1991; this replaced an earlier "randomly rotating" plan.
6. On March 20, 1995, Fenniman posted a memo to all personnel stating that he had discussed rotating shifts with Officers Kerlee and Costello. He announced that rotating shifts would begin in May on a four month basis, a change from the six month basis referenced in Joint Ex. No. 7. Stated purposes for this change to rotating shifts included insuring a variety of assignments, coverage and training opportunities, and shift continuity. Provisions were made to address any personal problems caused by the change to rotating shifts.
7. On April 26, 1995 Local President Costello wrote Fenniman saying that permanent patrol assignments had been a "long standing practice," that the proposed change was a unilateral action which must be bargained, and that the union was requesting such bargaining. Joint Exhibit No. 2

8. Also on April 26, 1995, Fenniman responded to Costello denying the request to bargain and citing language from CBA Article V which may be found in Finding No. 3, above.
9. The rotating shift plan was implemented as scheduled in May of 1995. Thereafter the Union filed a ULP claiming that this action constituted a refusal to negotiate in good faith and was a derivative restraint and coercion of unit members as pertains to rights accorded under RSA 273-A, citing violations of RSA 273-A:5 I (e) and (a) respectively. The City answered, denying that it had committed a ULP and relying on protections of the new Management Rights clause of the CBA and past practice whereby the City had changed shift schedules "on several occasions over the past ten years" without prompting a complaint or a grievance.
10. The ULP was timely filed under RSA 273-A:6 VII because the operative date was the date of implementation, not the date of contemplation.

#### DECISION AND ORDER

During negotiations for the 1993-1996 CBA, the parties deliberately and consciously negotiated new terms into their agreement. Among those were Article V relating to Management Rights and Article VI relating to Association Rights/Recognition. While one may not have been the quid pro quo for the other, there certainly was give and take between the parties over the breadth of the negotiations for the new contract. This is the very essence of the bargaining process. Thus, the parties made proposals, counter-proposals and compromises in order to arrive at their final agreement as it now appears as Joint Exhibit No. 1. The terms of that agreement which are pertinent to this case are recited in Finding No. 3, above.

As we review the charges, the answer and the CBA, we find no reason for us to disregard the negotiated language of Article V of the contract. It is a product of the parties' efforts. Likewise, there is no reservation elsewhere in the CBA which recites or protects work schedules or work shifts from the broad grant of managerial authority found in Article V. The very acts complained of in this case are protected by the language found in the CBA. They neither constitute a breach of that agreement or of past practice as this current contract marks the first time the parties have operated under Article V as currently written.

Thus, the "remedy" is to address the "problem" the same way it arose, by negotiations for a successor agreement when the current CBA expires on or after June 30, 1996. In the meantime, the change from permanent to rotating shifts was not, under the circumstances of this case, violative of RSA 273-A:5 I (a) or (e). The ULP is DISMISSED.

So ordered.

Signed this 31st day of AUGUST, 1995.

  
JACK BUCKLEY  
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Richard E. Molan and William Kidder present and voting.