



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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INTERNATIONAL BROTHERHOOD OF	:	
POLICE OFFICERS, LOCAL 580	:	
	:	
Complainant	:	
	:	
	:	CASE NO. P-0749:9
v.	:	
	:	
ROCHESTER POLICE COMMISSION	:	DECISION NO. 96-082
	:	
Respondent	:	

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### APPEARANCES

#### Representing International Brotherhood of Police Officers:

Peter C. Phillips, Esq.

#### Representing Rochester Police Commission:

Gary W. Wulf, Consultant

#### Also appearing:

Donald Vittum, City of Rochester  
Daniel Auger, City of Rochester  
David G. Dubois, City of Rochester Police  
Anne M. Brideau, Rochester Police  
Raymond Porelle, I.B.P.O., Local 580

### BACKGROUND

On April 23, 1996, I.B.P.O. Local 580 filed unfair labor practice charges alleging a unilateral change in working conditions, when permanent positions were changed to temporary positions, in violation of RSA 273-A:5 I (a), (d), (e) and (g). On May 6, 1996, the City of Rochester filed its answer. A

hearing was held before the PELRB on August 15, 1996, after which the record was closed.

### FINDINGS OF FACT

1. The Rochester Police Commission (Commission) employs police officers and other personnel in the operation of the Rochester Police Department and thereby is a "public employer" within the meaning of RSA 273-A:1 X.
2. IBPO Local 580 (Union) is the exclusive representative of police officers employed within the Rochester Police Department.
3. The Commission and the Union are parties to a collective bargaining agreement for the period beginning July 1, 1995 through June 30, 1996.
4. The Rochester Police Department is organized into three bureaus: the administrative, patrol and detective bureaus. New police officers are assigned to the patrol bureau. Movement from patrol duty to detective duty is considered a promotion. The wages remain the same but members of the detective bureau must have completed three years with the department, are assigned more skilled work, wear plain clothes, work set hours with set days off and are given a gold detective's badge.
5. Raymond Porelle testified that he had been employed for twelve and one half years by the Rochester Police Department. He has been a member of the detective bureau for five years beginning in July, 1991. Prior to his becoming a member of the detective bureau, Porelle had applied for the position by letter sent in response to a notice posted by Chief of Police Donald Vittum on June 11, 1991, and notice of his transfer was posted on July 3. He testified that he was not told the transfer was temporary and none of the related documents refer to this as a temporary transfer. (Union No. 2).
6. In October 1993, Officer Porelle was told by the detective bureau commander that he was to transfer back to the patrol bureau and so to bid for a shift. He protested and was told that the detective assignment had been temporary. Porelle followed orders and was given a patrol assignment. He asked for union

help and, in January, 1994, he was returned to the detective bureau but told that it was a temporary assignment.

7. In November, 1995, a notice was posted saying that all detective positions were to be eliminated and that detectives and other officers could apply for temporary assignment to the new detective positions. A copy of the undated notice is in evidence (Union No. 4). Page 2 of the notice reads as follows:

All temporary assignments to the investigative service bureau shall last no more than one year from the date of the assignment. During the period of assignment officers are subject to reassignment to the patrol services bureau should the need arise and are required to maintain a complete patrol uniform.

At the completion of the one year period the assignment will conclude and the officer will return to the patrol services bureau for re-assignment to patrol functions unless an extension is authorized by the Chief of Police. No officer may make application for more than one consecutive term to this temporary assignment.

8. Officer Porelle grieved the foregoing actions of the Commission. Officer Porelle and others applied for the positions and were tested by oral board. Officer Porelle was chosen for a temporary position (Union No. 4).
9. Sergeant Anne Brideau testified that she has been a police officer with the Rochester Police Department for eight years. She had been assigned to the detective bureau five years ago in December, 1991, six months after Raymond Porelle. She remained a detective until she applied for a promotion which required a transfer back to the patrol bureau. The only reason she would consider asking for a transfer to the patrol bureau was to achieve a promotion. She testified that she believed that she had been the first new detective to be told that hers was a temporary assignment to the detective bureau intended to continue for one year. She recounted that she had maintained her patrol officer's uniform for sometime after the transfer.

10. Former Chief Donald Vittum said that, prior to Brideau's assignment to the detective bureau, he regularly told officers assigned to the detective bureau that their's were temporary assignments. He believes that he informed Porelle that his assignment was temporary in July, 1991.
11. On December 16, 1995, the Rochester Police Commission responded to Officer Porelle's grievance on the matter of the "temporary" transfer in pertinent part:

It is the position of management that all assignments are the prerogatives of management and as such remain with the administration pursuant to the current contractual agreement with the IBPO as well as state law and practice. While such assignment will follow the procedures agreed to with the union, the establishment of such temporary assignment of patrol officers has always been a management right. No "permanent" assignments have ever been created by the Commission.

Commission Chairman Roger Beaudoin further pointed out, regarding the alleged discrimination, that Officer Porelle was one of the six chosen for the temporary position and that the oral boards had been conducted fairly.

#### DECISION AND ORDER

The fact that assignments to the detective bureau have been treated as permanent and the fact that Officer Porelle and others believed assignments to the detective bureau to be permanent are not dispositive in this case. The structure of its organization; the selection and the direction of its personnel are prerogatives of the public employer under the "managerial policy exception." RSA 273-A:1 XI. The policy decision to change the structure of the detective bureau is not subject to bargaining.

There is substantial ambiguity in the language describing the "return to patrol duty" and "extension of assignment" features of the policy. Ambiguous language contains the potential for abuses over which this Board may have jurisdiction. The detailed procedures used to implement the new policy change, which mainly concern terms and conditions of employment, are at

least optionally bargainable, Appeal of State, 138 NH 716 727 (1994). Indeed, Chairman Beaudoin has agreed to such bargaining in his correspondence of December 15, 1995 (Finding No. 11). The goal of bargaining is to establish procedures for policy implementation which may be applied with an even hand, keeping in mind the purpose of the Public Employee Labor Relations statute which is to foster harmonious and cooperative relations between public employer and public employee. Public Employee Labor Relations Act, Statement of Policy, Ch. 490:1 (December 21, 1975).

Unfair labor practice charges, Count 1, RSA 273-A:5 I (a) and (d), as well as (e) and (f) are dismissed.

Count 2 alleges discrimination in the conduct of the test by the oral board. officer Porelle may have been made uncomfortable by questions about his opinion of the detective bureau changes but he was not disadvantaged as a result of the questions asked by the panel. He achieved the end for which he was tested, a position in the investigative services bureau. No unfair labor practice has been found and Count 2, charging violations of RS 273-A:5 I (a) and (d), is dismissed.

So ordered.

Signed this 30th day of OCTOBER, 1996.

  
EDWARD J. HASELTINE  
Chairman

By unanimous decision. Chairman Edward J. Haseltine presiding.  
Members E. Vincent Hall and William Kidder present and voting.