

The Town answered on April 27, 1999. A hearing was held before the Public Employee Labor Relations Board on May 20, 1999. Closing briefs were submitted on June 21, 1999.

FINDINGS OF FACT

1. The Town of Salem employs firefighters and others to operate the Salem Fire Department and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Professional Firefighters of Salem, Local 2892, IAFF, is the duly certified bargaining representative for certain members of the Salem Fire Department as described in its certification document dated April 19, 1998.
3. The Salem Fire Department underwent reorganization in 1997. Since that time, the Town employs an Assistant Chief and two Deputy Chiefs. (Union Exhibit No. 1). The Assistant Chief and the Deputy Chief positions are not bargaining unit positions. Captains and other positions below Deputy Chief in the chain of command are bargaining unit positions.
4. On March 1, 1999, Captain Kevin Campbell received a telephone call from Chief John Nadeau asking if he would consider accepting assignment to the position of Deputy Chief on a part-time temporary basis since one of the Deputy Chiefs had been hurt and there was no other Deputy Chief who could fill out this Deputy Chief's "on call" schedule. According to Chief Nadeau's plan, Campbell would be paid on the pay scale of Deputy Chief while substituting in that position. Captain Campbell informed the Chief that he was interested in taking the temporary assignment to help the Department so long as it was agreeable to the Union.
5. Chief Nadeau met with Local 2892 President Fred Doucette on March 1, 1999, regarding the proposed solution to the staffing problem. Mr. Doucette indicated that he would speak to the Local's legal counsel regarding the propriety of filling a management position with a bargaining unit member on a temporary basis. Later that day, Doucette informed

Nadeau that legal counsel had advised against Campbell's temporary assignment as Deputy Chief. (Union Exhibit No. 3).

6. Captain Campbell had applied for the position of Deputy Chief at the time of the reorganization in 1997. (Union Exhibit No. 2). At the hearing, Chief Nadeau testified that he had seen his solution as a "win/win" proposal for all concern and noted that Campbell would have had an opportunity to learn the duties of the position while assisting the Department with its temporary staffing problem.
7. Chief Nadeau consulted with the Town's counsel on the matter of hiring a bargaining unit member to perform "on call" incident commander duties usually performed by a Deputy Chief. In his letter of March 23, 1999, Attorney Robert Leslie advised that Article 17 of the CBA should be heeded regarding overtime pay and that the assignment could be refused by the employee under Article 17.4 of the CBA.
8. Subsequently, Chief Nadeau offered the position to Captain Campbell who refused based on the Union's opinion that a bargaining unit member should not hold a union card as a captain and then take part-time work acting as a member of management and be paid on a non-union, non-negotiated pay scale that applies to management.

DECISION AND ORDER

The Salem Fire Department found itself in a predicament when a Deputy Chief became injured and could not carry out his duties. The Department was unable to fill its "on call" roster position of incident commander usually performed by a Deputy Chief. The Chief approached a bargaining unit member to determine his interest in taking the part-time temporary management assignment. The Chief learned that wage terms, specifically overtime wages addressed in the CBA, were implicated. Nevertheless, the Chief made an offer to Captain Campbell.

Wages and like terms are mandatory subjects of bargaining and may not be unilaterally changed but must be negotiated. Appeal of Berlin Education Association, 125, N.H. 779, 782, 783

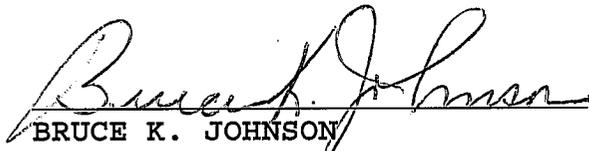
(1984). When the bargaining unit president and counsel expressed dismay at Chief Nadeau's proposal and when counsel to the Department advised the Chief that overtime rates, as addressed in the CBA, Article 17-Plus rates, were implicated by the proposed arrangement, Chief Nadeau should not have pursued his solution by offering the temporary managerial position to Captain Campbell. The Chief was free to offer Captain Campbell the full-time position of Deputy Chief but not to create a temporary hybrid position that would have affected Campbell's overtime pay received for his bargaining unit work as a Captain.

The resolution of the staffing dilemma was best achieved through negotiations and not through "direct dealing" which is contrary to the requirement of good faith bargaining with the exclusive bargaining representative. Appeal of Franklin Education Association, 136, N.H. 332, 335 (1992).

The action of the Salem Fire Department constitutes "direct dealing," an unfair labor practice in violation of RSA 273-A:5 I (e), (g) and (h). The Salem Fire Department shall hereafter refrain from such actions.

So ordered.

Signed this 8th day of July, 1999.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members Seymour Osman and E. Vincent Hall present and voting.