



NH Supreme Court declined appeal of this decision on September 13, 1990, NH Supreme Court Case No. 90-209.

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| CITY OF CONCORD, NEW HAMPSHIRE | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | CASE NO. F-0101:18 |
| | : | |
| CONCORD FIREFIGHTERS, LOCAL 1045 | : | DECISION NO. 90-02 |
| IAFF (GUY NEWBURY) | : | |
| | : | |
| Respondent | : | |
| | : | |

APPEARANCES

Representing the City of Concord:

Paul F. Cavanaugh, Esq., City Solicitor

Representing Local 1045, IAFF:

Thomas F. Hersey, Esq., Counsel

Also in attendance:

Guy Newbury, IAFF

BACKGROUND

The City of Concord petitioned this Board for a declaratory judgment on the meaning and applicability of RSA 273-A:1 (XI) and RSA 273-A:3 (III) regarding a member of Local 1045 IAFF, Guy Newbury, who alleged he was denied promotion to fire lieutenant in a process which did not conform to the City's Personnel Rules and Regulations. The parties entered into a collective bargaining agreement containing an article on vacancies, which includes promotion and a grievance procedure as required under RSA 273-A. The City requested a judgment declaring that the question of whether or not it had complied with its Personnel Rules and Regulations is (a) a question to be determined under those rules and (b) is a prohibited subject of bargaining under the provisions of RSA 273-A:3 (III) as part of the policies and practices of a merit system relating to examination, appointment, and advancement under the managerial policy within the exclusive prerogative of the City.

Local 1045 IAFF through its Counsel objected to the petition on the basis that Firefighter Newbury filed a grievance under the collective bargaining agreement, Article 21, which mandates that the promotion procedure comply with the City's Personnel Rules and Regulations; that all steps were followed through to final and binding arbitration.

A hearing in this matter was held in the offices of the Board in Concord on January 4, 1990 with all parties represented.

FINDINGS OF FACT

Article XXXI, Section 2 of the existing agreement between the parties provides that all promotions shall be made in accordance with the City's Personnel Rules and Regulations (34-5-3 and 34-6-3) which outlines the process.

The arbitrator found the grievance to be arbitrable, found that the City had violated Personnel Regulations 34-5-3 by its use of the minimum qualification worksheet and thus violated Article XXXI, Section 1.2 of the collective bargaining agreement.

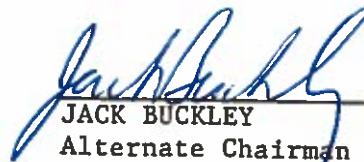
The arbitrator's decision granted the grievance and ordered the City to re-rank the examinees according to their scores on the examinations taken in April of '89 in connection with the promotion process.

DECISION AND ORDER

After careful review of all materials submitted, the Board declines to issue a ruling based on the arbitrator's final and binding decision.

The petition for a declaratory ruling is hereby DISMISSED.

Signed this 11th day of January, 1990.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and James C. Anderson present and voting. Also present, Executive Director, Evelyn C. LeBrun.