



NH Supreme Court declined appeal of this decision on July 22, 1993, Supreme Court No. 93-264.

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PROFESSIONAL FIREFIGHTERS OF	:	
NORTH HAMPTON, LOCAL 3211	:	
	:	
Complainant	:	CASE NO. F-0140:4
	:	
v.	:	DECISION NO. 93-06
	:	
TOWN OF NORTH HAMPTON	:	
	:	
Respondent	:	

APPEARANCES

Representing the Professional Firefighters of North Hampton:

Shawn Sullivan, Esq.

Representing the Town of North Hampton:

Robert Tawney, Chief Negotiator

Also appearing:

- Shawn Flood, NNEC, AFT
- Mary Herbert, Town of North Hampton
- Frank A. Beliveau, Town of North Hampton
- Ralph O Connor, Local 3211
- J.B. Brown, Local 3211
- Brad Hutchings, Local 3211
- Christopher LeClaire, Local 3211
- James W. Downs, Local 3211
- James R. Colcord, Local 3211
- Chief Thomas Lambert

BACKGROUND

The Professional Firefighters of North Hampton, Local 3211, IAFF filed unfair labor practices (ULP) charges on October 7, 1992 against the Town of North Hampton (Town) alleging violations of RSA 273-A:5 I (a), (b), (c), (e) and (g). The Town filed its answer on October 22, 1992 after which this matter was heard by the PELRB on January 7, 1993.

FINDING OF FACT

1. The Town of North Hampton is a "public employer" of firefighters and other personnel as defined by RSA 273-A:1 X.
2. The Professional Firefighters of North Hampton Local 3211, IAFF is the duly certified bargaining agent for firefighters and lieutenants of the North Hampton Fire Department.
3. The particular bargaining unit, namely, Local 3211, was certified by the Public Employee Labor Relations Board as the exclusive bargaining agent on or about September 9, 1991. Since that time, the parties have been in negotiations attempting to reach their first collective bargaining agreement. The parties are currently at impasse in that endeavor.
4. Unrebutted testimony from the President of Local 3211, established that there has been a practice of more than ten years' duration that firefighters/EMT's have received overtime on a rotating basis, with the employees' names moving from the top to the bottom of that rotating overtime list after having been chosen for an overtime assignment. Thus on-going practice is further substantiated by Administrative Regulations of the North Hampton Fire Department, Section 103.01, dated 12/15/90, relative to "filling the shifts" which provides that a "shift will be filled according to seniority. Officers-by seniority (time and service) on each shift open; FF/EMT-by seniority on a rotating list (kept in a log book in dispatch) by last shift worked."
5. On May 7, 1992 Chief Lambert issued a memorandum to all personnel of the fire department stating that the Board of Selectmen, at their meeting of April 27, 1992, had instructed him (Lambert) "to cover shifts in the most economical fashion available. This is to include that qualified "paid on call personnel' be offered first refusal on overtime shifts. Therefore the following procedure shall be used. When filling an open shift for a firefighter the three qualified call people...should be offered first refusal. Once that list is exhausted the usual procedure and list should be followed." These changes modified both the prior practice of more than ten years' duration and the provisions of the standard operating procedure identified as Union Exhibit #1, dated December 15, 1990. These changes, reflected by the memo identified as Union Exhibit #2,

where unilateral in nature and not the product of collective bargaining.

6. On May 13, 1992, the Town deviated from past policy and, consistent with the new policy reflected in the memorandum from Chief Lambert dated May 7, 1972, appointed a call firefighter to a vacancy instead of utilizing the rotating list. This prompted a grievance by a regular non-selected firefighter on June 9, 1992, which was denied by the Selectmen July 28, 1992.
7. On September 8, 1992, Local Union President O'Connor wrote a letter to acting Chief Lambert requesting that the policy in his memo of May 7, 1992 be withdrawn and all overtime shifts be filled according to the North Hampton Fire Department Administrative Regulation 103.01 of December 15, 1990, identified in these proceedings as Union Exhibit #1. This request was denied.
8. Notwithstanding the policy dating back more than ten years and the contents of Administrative Regulation 103.01 (Union Exhibit #1), testimony from the Chairman of the Board of Selectmen for the Town of North Hampton was that that document had never been formally approved by the Selectmen.

DECISION AND ORDER

There is no evidence that the outcome in this case should be any different than our determinations in Teamsters Local 633 v. Town of North Hampton (Decision No. 92-135, August 31, 1992). In that case, this Board found that there was "ample evidence that the Town and/or its agents materially changed working conditions by its unilateral determination and actions relative to the assignment of overtime." Although those changes occurred in March of 1992 and, in this case, the changes occurred in May of 1992, the principle remains unchanged. The Town may not make unilateral changes in working conditions; overtime--once it is determined to be used--is a working condition. As this Board said in the Teamsters case, supra, "once management has decided to utilize overtime, then the manner in which it is assigned (whether by seniority, department, shift or otherwise) is a mandatory subject of bargaining. The unilateral changes by management in existing policy violated the obligation to bargain in good faith and thus constituted an unfair labor practice under RSA 273-A:5 I (e)."

In this case, the parties are negotiating for their first contract. It is not material to the outcome in these proceedings that the SOP (Union Exhibit #1) allegedly was not approved by the Board of Selectmen. The mere fact that the parties have openly and

consistently followed a policy relative to the manner in which overtime assignments are distributed is sufficient to establish past practice. When the Town issued the memorandum of May 7, 1992 through Chief Lambert (Union Exhibit #2), it made unilateral changes in that policy. Since these changes were unilateral and not the product of negotiations, they violated the obligation to maintain the status quo pending the course of negotiations. Notwithstanding the foregoing, the Town was and continues to be free to determine when and if overtime should be used. Conversely, once they have made the determination to use overtime, the Town must adhere to the existing policy as to how that overtime is to be distributed until that policy shall have been changed through the negotiation process.

By way of remedy, we find and direct that:

1. The Town's conduct constituted an unfair labor practice within the meaning of RSA 273-A:5 I (e).
2. The unilateral change in working conditions complained of in the ULP changed long-standing policies and practices relative to the assignment of overtime which impacted bargaining unit members.
3. Once the Public Employer decides it will use personnel in an overtime status, it must maintain its former practices relative to distribution of that overtime. Thus, we direct the Town to (a) Cease and Desist from following the policies set forth in the memorandum of Chief Lambert dated May 7, 1992 and identified herein as Union Exhibit #2 and (b) to adhere to the status quo pertaining to overtime distribution until modifications therein may have been agreed to during negotiations.
4. Back pay is not awarded.

So ordered.

Signed this 10th day of February, 1993.


 JACK BUCKLEY
 Alternate Chairman

By unanimous vote. Alternate Chairman Jack Buckley presiding.
 Members Seymour Osman and Arthur Blanchette present and voting.