



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NASHUA FIREFIGHTERS ASSOCIATION,
LOCAL 789, IAFF, AFL-CIO, CLC**

Petitioner

and

CITY OF NASHUA

Respondent

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CASE NO. F-0105-28

DECISION NO. 2000-084

DECISION AND ORDER

The PELRB has before it an assented-to Motion for Continuance filed by the Complainant. Following review of the same it finds as follows:

1. The Complainant made its initial filing of this ULP complaint on May 23, 2000 requesting injunctive relief which was granted, ex parte, by Alternate Chairman Bruce Johnson on May 25, 2000.
2. The matter was scheduled by the PELRB for a Pre-Hearing Conference on June 16, 2000 in due course and in conformity with its statutory mandate to address such complaints in a timely and expeditious manner.
3. The Respondent, on the occasion of the Pre-Hearing Conference date being set, requested and was granted a continuance. The rescheduled Pre-Hearing Conference was conducted on July 10, and resulted in an order on that same date setting August 29, 2000 as the date for the Board's evidentiary hearing.
4. Complainant's counsel has misconstrued the provision in that Order of July 10, 2000 wherein he draws the apparent inference from the procedural instruction, " Any preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled hearing date," that this provision is an invitation to notify the Board at the last possible

date that grounds exist to seek a continuance. No such invitation was meant to be implied by the PELRB.

5. Counsel who are experienced before the PELRB are aware that the Board consists of volunteer members, albeit appointed to serve in that capacity, and that representation from each of the management, labor and public sectors must be coordinated to be available on a specific scheduled hearing date.
6. Notification of the unavailability of a "critical" (sic), i.e. "material" witness on the fourteenth day prior to a scheduled hearing, while sufficient in many instances as the basis for a continuance, becomes less so in the eyes of the Board when it is obvious that inhabitants of this region take vacations in the month of August and that the fact of a witness's vacation is usually discernable much more in advance than in the instant circumstance. If this particular witness's unavailability was due to temporary duty fighting forest fires, or other such "emergency" there may be more obvious cause for the PELRB being notified only within the minimum time requirements of the July 10, 2000 Order. If an emergency created this request the PELRB is confident that counsel would have fully apprised it of the reason for this witness's unavailability at this time. Similarly, the PELRB is confident that counsel fully understands the need to advise it of witness availability issues at the earliest possible time.
7. Under the existing rules which require that the PELRB notify counsel at least ten days in advance of any evidentiary decision, there is scant opportunity for the PELRB to reschedule another matter before the, now already convened, Board on the date reserved to the parties in this instant matter.
8. Notwithstanding its concerns over this particular "bite at the apple" requested by the Complainant, the **Motion is Granted** after due consideration of the interests involved and the mutual agreement of the parties. Providing further, however that no additional continuances shall be granted in this matter lacking a showing of extraordinary circumstances. **This matter shall now be heard on Thursday, September 14, 2000 at 9:30 a.m.**

So ordered.

Signed this 15th day of August, 2000.



Donald E. Mitchell, Esq.
Hearing Officer