

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**PORTSMOUTH BOARD OF POLICE  
COMMISSIONERS**

**Petitioner**

v.

**IBPO Local # 402**

**Respondent**

**CASE NO. P-0709-21**

**DECISION NO. 2000-111**

**PRE-HEARING CONFERENCE MEMORANDUM AND ORDER**

**BACKGROUND**

The Portsmouth Board of Police Commissioners (Complainant) filed unfair labor practice charges on September 7, 2000 pursuant to RSA 273-A:5 I (d), (f) and (g) alleging that certain actions of the IBPO Local #402 (Respondent) constituted a breach of the parties collective bargaining agreement (CBA) and violated the statute. These actions were undertaken as the result of the parties' inability to successfully utilize the grievance procedure and culminated in the Respondent filing its demand for Arbitration with the American Arbitration Association. The Complainant requests relief in the form of a Board order finding the union to have committed an unfair labor practice and issuing a cease and desist order preventing arbitration. The Respondent also seeks to have certain expenses reimbursed by the union.

The Respondent generally admits the material allegations related to the underlying incident. However, the union interprets the Commission's actions in not hearing the grievance within certain dates as a denial violative of the parties' CBA grievance procedure entitling it to demand arbitration. The union also claims that the Respondent Board of Police Commissioners, by its decision not to hear the grievance within a particular time period and also by its alleged attempts at dictating the manner of proof by which the hearing would go forward constitutes unfair labor practices on its part in violation of RSA-A:5, I (a), (e), (g) and (h). The union, now cross-complainant, then proceeds to request relief in the form of a Board order finding the Respondent Board of Police Commissioners has committed unfair labor practices, ordering the

cross-complainant, then proceeds to request relief in the form of a Board order finding the Respondent Board of Police Commissioners has committed unfair labor practices, ordering the commission to cease and desist from violating the parties' grievance procedure and ordering certain reimbursement of expended monies by the union.

**PARTICIPATING REPRESENTATIVES**

For the Complainant: Thomas J. Flygare, Esq.

For the Respondent: Peter C. Phillips, Esq., Counsel to the IBPO Local 402

**WITNESSES**

For the Complainant:

1. Bradley Russ, Chief of Police
2. Michael Magnant, Deputy Chief
3. William Mortimer, Chairman, Police Commission

For the Respondent:

1. Officer John Cantola, Stewart, Local 402
2. Al Kane
3. Rodney McQuate

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon a proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

## EXHIBITS

### Joint Exhibits:

1. Memorandum, Officer Centola to Chairman Mortimer, dated 8/14/00
2. Notice of Demand for Arbitration, Attorney Phillips to American Arbitration Association, dated 8/25/00
3. Parties' Collective Bargaining Agreement; July 1, 1998 to June 30, 2003
4. Memorandum, Officer Centola to Dep. Chief Magnant, dated 7/7/00
5. Memorandum, Officer Centola to Local 402's Executive Board, 7/8/00
6. Memorandum, (with copy of Joint #5 attached) Officer Centola to Chief Russ, dated 7/9/00
7. Letter City Attorney Sullivan to Union Attorney Phillips, dated 7/12/00 (partial redaction)
8. Memorandum, Officer Centola to Chairman Mortimer, dated 7/21/00
9. Memorandum, Chief Russ to officer Centola, dated 8/1/00
10. Copy of Police Commission August 8, 2000 Meeting with posted legend dated 8/2/200
11. Memorandum Police Commission to Attorneys Phillips and Flygare, dated 8/8/00
12. Letter, Administrator Gonzalez (American Arbitration Assoc.) to Attorneys Phillips and Flygare, dated 9/14/00
13. Letter, Attorney Phillips to Administrator Gonzalez, dated 9/26/00

### Police Commission Exhibits (Complainant)

1. Commission minutes of August 8, 2000 meeting
2. Letter, Attorney Flygare to Administrator Gonzalez, dated 9/11/00

And also anticipated,

3. \*Letter, Attorney Flygare to Administrator Gonzalez, dated 10/3/00
4. \*Police Internal Report ; authored by Captain Price, dated 5/12/00
5. \*Memorandum, Chief Russ to Dep. Chief Magnant, dated 6/20/00

Marked for Identification ONLY\*

### Union Exhibits (Respondent)

1. Memorandum, Officer Centola to Chairman Mahoney, dated 5/12/98
2. Memorandum, Officer Centola to Chairman Mahoney, dated 8/18/98
3. Memorandum, Officer Centola to Chairman Mahoney, dated 12/3/98

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the

parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

### LENGTH OF HEARING

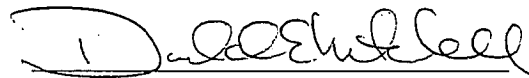
The representatives indicate that the direct testimony of witnesses is now estimated to 3 hours. The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) calendar days from the date of this order.

### DECISION AND PRE-HEARING ORDER

1. The parties shall meet and confer to draft an Agreed Statement of Facts to be submitted to the Board no later than November 14, 2000.
2. The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than November 17, 2000.
3. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
4. Either party may file a motion to consolidate this matter with Case No. P-0709:22, or the Board may undertake to consolidate the matters on its own motion following receipt of the Commission's Answer to said later filed case.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled hearing date.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on **November 21, 2000 beginning at 9:30 AM.**

Signed this 23<sup>rd</sup> day of October, 2000.



Donald E. Mitchell, Esq.  
Hearings Officer