



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Nashua Police Supervisors Association
IBPO Local 418

Complainant

v.

City of Nashua Police Commission

Respondent

Case No. P-0744-2

Decision No. 2001-120

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Nashua Police Supervisors Association, ("Union") filed unfair labor practice charges on October 3, 2001 pursuant to RSA 273-A:5 I (a), (e), (g) and (h) alleging that the Nashua Police Commission (Commission), and its agent, Chief of Police Donald Gross unilaterally changed the terms and conditions of employment and restrained, coerced and otherwise interfered with members of the employee association in the exercise of certain rights afforded to an exclusive bargaining representative under the statute. Said actions of the employer and its agent complained of allege that the Police Chief promoted a "Technical Sergeant" to the rank of Lieutenant contrary to department policy and past practice.

The Union requests relief in the form of a Board order finding that the Commission committed an unfair labor practice, requesting that the Board issue a cease and desist order against the Commission and further order the return to the *status quo* existing prior to the unilateral action and ordering copies to be posted.

The Nashua Police Commission filed its answer on October 18, 2001 wherein it denies the sum and substance of the essential allegations of the Union and asserts in its answer that the authority to promote has been properly preserved in the collective bargaining agreement as a management right. The Commission requests relief in the form of a Board denial of the unfair labor practice complaint and the request for a cease and desist order and posting of the same.

The Commission also filed a Motion to Dismiss Unfair Labor Practice Charges on October 18, 2001. It states as its basis that the Union's charges involve a promotional issue that has been reserved to the Commission by agreement of the parties in their collective bargaining agreement (CBA). It asserts that no breach of the CBA has occurred as there are no promotional provisions in the CBA, save the Management Rights Clause and consequently there is no obligation to bargain promotional issues. Lastly, it states that there is no statutory violation of RSA-A:5(I)(a) that relates to an employer "derivatively" restraining, coercing or otherwise interfering with employees in the exercise of any protected rights. For its part, the Commission seeks to have the complaint dismissed prior to an evidentiary hearing and in the event of such a hearing have the PELRB deny the complaint.

PARTICIPATING REPRESENTATIVES

For the Complainant: Peter C. Phillips, Esq., Counsel to the IBPO Local 418

For the Respondent: Dorothy Clarke, Esquire, Assistant Corporate Counsel

ISSUES FOR DETERMINATION BY THE BOARD

1. Do the actions of the Chief of Police as agent of the Police Commission in promoting William Mansfield to the rank of Lieutenant constitute an improper unilateral change in the terms and conditions of employment?
2. Do the actions of the Chief of Police as agent of the Police Commission in promoting William Mansfield to the rank of Lieutenant constitute restraint, coercion or interference with the employees in the exercise of their protected statutory rights?

WITNESSES

For the Complainant:

1. Sgt. Frank Paison, Local 418 President

For the Respondent:

1. Donald Gross, Chief of Police
2. Carol Desrosiers, Executive Assistant

Both parties reserve the right to amend their List of Witnesses in conformity with administrative Rule Pub 203.01 (b), 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. Collective Bargaining Agreement, July 1, 2000 – June 30, 2002
2. Nashua Police Department Promotional Manual
3. Selected provisions of the Nashua Police Department Rules and Regulations Manual

For the Union:

None anticipated, other than those incorporated as Joint Exhibits.

For the Commission:

1. Weatherbee promotion order
2. Letter from the Chief of Police to the Union, dated 5/31/01
3. Nashua City Charter provision re: Police Commission Authority
4. Lt. Mansfield's personnel file (selected contents)

Both parties reserve the right to amend their List of Exhibits in conformity with the date stated above 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 Administrative Rule 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 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 at least fourteen (14) days prior to the scheduled hearing date.

DECISION AND PRE-HEARING ORDER

1. The Commission has filed a Motion to Dismiss to which the Union shall file its objection on or before December 5, 2001.
2. The parties have made representations that they are in settlement discussions that would affect the disposition of these proceedings. In the event of settlement, the parties shall execute a mutual stipulation of the settlement terms and submit the same to the PELRB on or before December 7, 2001. In that event, this matter will be withdrawn from the docket upon the submission of stipulations and all proceedings shall cease.
3. The Commission representative shall identify and notify the Union representative of the specific provisions of any police manuals, and any additional correspondence, memoranda or reports that it intends to use as exhibits on or before December 13, 2001.
4. The parties have agreed to meet and confer for the purpose of executing a statement of mutually agreed facts upon which no additional evidence need be produced at the hearing. A statement of Stipulated Facts shall be submitted to the PELRB prior to the hearing.
5. 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.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled date of the hearing as appears below.

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 Tuesday, January 22, 2002 beginning at 9:30 AM.

Signed this 20th day of November, 2001.



Donald E. Mitchell, Esq.
Hearing Officer