



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME Local 3657, Milford Police Employees	*	
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Complainant	*	Case No. P-0797-3
v.	*	
	*	Decision No. 2008-076
Town of Milford	*	
Respondent	*	
	*	

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PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 3657, Milford Police Employees (the "union") filed an unfair labor practice complaint on February 21, 2008 alleging that on January 9, 2008 the town, acting through Police Chief Douglas, improperly informed bargaining unit members that sergeants were "out of the union effective January 4, 2008." According to the union, Chief Douglas made these statements to union members Sergeant Pelletier and Detective Plumer and Captains Toom and Nervik were also present. The union contends the town's statements arise from the board's order issued on January 4, 2008 in Case A-0480-21 (PELRB Decision No. 2007-183), which the union contends does not order the removal of sergeants from the union effective January 4, 2008. The union contends that the town's actions in meeting with a bargaining unit member individually, unilaterally excluding sergeants from the bargaining unit, refusing to recognize the union as the exclusive representative of the sergeants and refusing to comply with the board's order (PELRB Decision No. 2007-183) constitutes an unfair labor practice. The union also claims the town has restrained, coerced or otherwise interfered with the employees in the exercise of their rights and with the administration of the employee organization. The union claims the town's actions constitute a violation of RSA 273-A:5 I (a), (b), (e), (g) and (i).

As remedies, the union requests that the PELRB: 1) find that the town violated RSA 273-A:5 I, (a), (b), (e) (g) and (i); 2) order the town to cease and desist from dealing directly with individual employees regarding the terms and conditions of employment; 3) in order to prevent irreparable harm, issue a cease and desist order under RSA 273-A:6, III pending a hearing under Pub 201.05 preventing the town from refusing to recognize the union as the exclusive representative of the Sergeants and ordering the town to comply with PELRB Decision No. 2007-183; 4) order the town to recognize the union as the exclusive representative of the effected employees; 5) find that the town has interfered with the administration of the employee

organization; 6) find that the town has restrained coerced or otherwise interfered with the employees in the exercise of their rights; 7) order the town to publicly post the findings of the board for 30 business days; 8) order the town to make the union whole for any and all costs and expenses incurred to pursue the prohibited practice charge; and 9) order any and all other relief as the board deems necessary and appropriate.

On March 7, 2008 the town filed its answer denying the union's unfair labor practice charge. The town asserts that it acted properly and that the issues raised by in the complaint are pending in the town's Petition for Declaratory Ruling. The town requests that the PELRB: 1) dismiss the Unfair Labor Practice Complaint because the union failed to state a claim under RSA 273-A and because the issues pending are already before the board; and 2) deny the union's prayers for relief as lacking in substance on the merits and without a proper basis in law or fact.

The undersigned Hearing Officer conducted a pre-hearing conference on March 31, 2008 at the offices of the Public Employee Labor Relations Board in Concord.

#### PARTICIPATING REPRESENTATIVES

For the Union: Erin L. Goodwin, Esq.

For the Town: Warren D. Atlas, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the town informed bargaining unit members on January 9, 2008 that sergeants are out of the union as of January 4, 2008 and/or thereafter and if so whether the town's actions constitute a violation of RSA 273-A:5 I (a), (b), (e), (g) and (i)?

#### WITNESSES

For the Union:

1. Steve Lyons, AFSCME Staff Representative
2. Officer, Benjamin Lessard, Chapter President
3. Detective Sean P. Plumer, present for 1-9-08 meeting
4. Sergeant Shawn Pelletier, present for 1-9-08 meeting

For the Town:

1. Chief Frederick Douglas, present for 1-9-08 meeting
2. Captain Toom, present for 1-9-08 meeting
3. Union Steward Plumer, present for 1-9-08 meeting
4. Sergeant Pelletier, present for 1-9-08 meeting
5. Union President Lessard, present for 1-9-08 meeting
6. Captain Nervik, present for 1-9-08 meeting

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

For the Union:

1. Collective Bargaining Agreement
2. Certification of Representative & Order to Negotiate
3. PELRB Decision No. 2006-046
4. PELRB Order on Motion for Rehearing, Decision No. 2007-183
5. Additional Documents as discovered

For the District:

1. Collective Bargaining Agreement, 2005-2009

Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

### LENGTH OF HEARING

The time being set aside for this hearing is 3 hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least 10 days prior to the date of the evidentiary hearing.

### DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. Unless otherwise ordered, the parties shall meet, or otherwise confer, on or before April 30, 2008 and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. The parties shall document any such agreement by immediately filing a joint statement which includes a proposed schedule for the parties' fact stipulation filings and briefs, if any.
2. If the matter is to proceed to a hearing the parties shall meet, or otherwise confer, on or before April 30, 2008 in order to compose a mutual statement of agreed facts. The parties shall file their fact stipulations at least 15 days prior to the date of the hearing.
3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists at least 15 days prior to the scheduled hearing date. The parties shall meet, or otherwise arrange, to pre-mark any 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. The parties shall file any motions no later than 20 calendar days prior to the scheduled hearing date.


5. On or before April 14, 2008 the union shall file a specification providing the factual detail of any alleged improper conduct of the town, if any, occurring subsequent to the meeting of January 9, 2008 concerning the status of sergeants, their inclusion in or coverage under the existing collective bargaining agreement, and/or the union's status as representative of the sergeants' interests under the existing collective bargaining agreement.

6. On or before April 25, 2008 the town shall file its responsive pleading, if any, to the submissions the union files pursuant to the preceding paragraph.

7. At the pre-hearing a number of potential hearing dates in May and June were reviewed. The town is available for hearing on May 21, 2008 and attorney Goodwin will determine if she will be available on that date as well. Attorney Goodwin will communicate her availability on that date on or before April 14, 2008. Subject to a possible rescheduling due to the foregoing, and unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on **July 15, 2008 at 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord.

So ordered.

March 31, 2008.

  
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Douglas L. Ingersoll, Esq.  
Staff Counsel/Hearing Officer

Distribution:

Erin L. Goodwin, Esq.

Warren D. Atlas, Esq.