



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

NEPBA Local 11/Portsmouth Police Patrolmen's  
Union

Complainant

v.

Portsmouth Police Commission

Respondent

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Case No. P-0709-31

Decision No. 2008-143

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

NEPBA Local 11/Portsmouth Police Patrolmen's Union (the "union") filed an unfair labor practice complaint on May 22, 2008 alleging that the Portsmouth Police Commission (the "commission") committed an unfair labor practice in violation of RSA 273-A:5 (a), (b), (c), (d) and (g) on account of its adoption of a police uniform anti-adornment policy. According to the union, Chief Magnant issued general order GO-2008-02 which amended Portsmouth Police Department SOP P-102 by providing that "[n]o team designation, merit award, commemorative or affiliation pins shall be worn on the uniform of the day." In general, the union complains that as a result: 1) the city has unilaterally and improperly changed a term and condition of employment because the police uniform anti-adornment policy is a mandatory subject of bargaining; 2) the commission and Chief Magnant are retaliating against the union for exercising its rights as reflected in PELRB Decision No. 2007-140, Case No. P-0709-28; and 3) the new anti-adornment policy constitutes restraint, coercion, interference with and discrimination against the union because its purpose and/or effect is to prevent the display of union insignia such a NEPBA union pin.

The union requests that the PELRB: a) issue an order that the commission cease and desist from implementation of general order GO-2008-02 and return to the status quo which existed prior to the implementation of said rule; b) issue an order requiring the commission to pay the union's costs and attorney fees incurred in bringing this action; and c) order such other relief as necessary.

The commission filed its answer on June 6, 2008. The commission: 1) generally denies that it has retaliated or discriminated against the union; 2) denies that it was obligated to bargain the anti-adornment policy; 3) asserts that the claim is barred by *res judicata* and the 6 month limitation period imposed by RSA 273-A:6, VII; and 4) contends that the union is obligated pursue this matter through binding arbitration.

The commission requests that the PELRB: a) dismiss the charge with prejudice; b) order the union to reimburse the city for its fees, expenses, and lost time in responding to the charge; and c) grant such other relief and may be appropriate under the circumstances.

The undersigned Hearing Officer conducted a pre-hearing conference on July 28, 2008 at 9:00 a.m. at the Public Employee Labor Relations Board in Concord.

#### PARTICIPATING REPRESENTATIVES

For the Union: Peter J. Perroni, Esq.

For the Commission: Thomas J. Flygare, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the commission improperly adopted GO-2008-02 in violation of RSA 273-A:5 (a), (b), (c), (d) and (g)?

#### WITNESSES

For the Union:

1. Chief Magnant
2. Officer Brabazon
3. Deputy Chief DiSesa
4. Officer Webb
5. All members of the Police Commission

For the Commission:

1. Chief Magnant
2. Commissioner Gerald Howe
3. Deputy Chief DiSesa

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 proper showing, later with 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

For the Union:

1. CBA
2. 1/9/08 Memo from Chief
3. New and old SOP
4. Police Commission Minutes
5. Newspaper Article 1/9/08
6. Union's Demand to Bargain
7. Letter from Chief 1/23/08
8. General Order 1/11/08
9. PELRB Decision No. 2007-140

For the Commission:

1. CBA, current and prior
2. SOP, current and prior

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 with 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 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 4 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 September 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 hearing, the parties shall meet, or otherwise confer, on or before September 30, 2008 in order to compose a mutual statement of agreed facts. The parties shall file their fact stipulations on or before October 3, 2008.

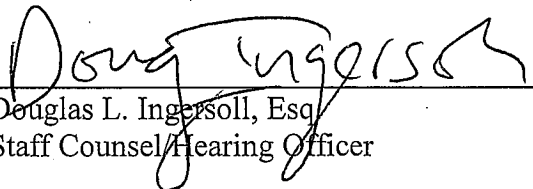
3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists at least 5 days prior to the scheduled hearing date. The parties shall meet, or otherwise arrange, to pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. The parties shall file pre-hearing briefs on or before September 30, 2008 addressing matters such as: a) the alleged duty to bargain the subject of GO-2008-02; b) the standard applicable to the scrutiny of a uniform anti-adornment policy such as GO-2008-02; c) the applicability of Decision 2007-140 to this case; d) the extent to which *res judicata* and the 6 month statute of limitations imposed by RSA 273-A:6, VII apply to this case.

5. The motion to continue discussed at the pre-hearing conference is granted. 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 **October 17, 2007 at 9:30 a.m.** at the Public Employee Labor Relations Board in Concord.

So ordered.

July 29, 2008.

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

Distribution:

Peter J. Perroni, Esq.

Thomas J. Flygare, Esq.