



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DERRY POLICE ASSOCIATION

COMPLAINANT

CASE NO. P-0702-22

v.

DECISION NO. 2008-170

TOWN OF DERRY

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: August 22, 2008 at the PELRB in Concord.

Appearances: J. Joseph McKittrick, Esq., Derry Police Association
Thomas M. Closson, Esq., Town of Derry

Background:

The Derry Police Association (the "Association") filed an unfair labor practice complaint against the Town of Derry on July 11, 2008. The Association's complaint arises from the Derry Police Department's conduct of Internal Investigation interviews in May of 2008. According to the Association, the department violated the Weingarten rights of Association members when Captain Thomas effectively ordered Officer Jackson, an Association union steward, to act as the union representative during the course of the Internal Investigation interviews. The Association claims that the department also failed to provide Officer Jackson with sufficient information

concerning the subject of the interviews. The Association contends that the department should have provided greater notice of the Investigatory Interviews in order to allow the Association to arrange for the attendance of an Association representative with a higher level of expertise/experience than Officer Jackson. The Association claims a violation of Weingarten rights even though Officer Jackson and the employees being interviewed may not have objected to Officer Jackson's involvement, requested a delay of the interview process, or requested the service of another Association representative during the Investigatory Interview process. The Association also contends the department unnecessarily interviewed Association president Officer Houle during the course of the Internal Investigation, thereby rendering Officer Houle unavailable to serve as the Association representative during the Investigatory Interviews.

The Association claims the Derry Police Department's actions constitute an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (e), (g), (h) and (i) and requests that the PELRB: 1) find that the Town has violated the Association and its members' rights; 2) order that the Town cease and desist in its interference with the Weingarten Rights of the Association and its members; 3) order that the Town reimburse the Association for its expenses in having to bring this complaint.

The Town filed its answer on July 21, 2008. The town contends that Captain Thomas contacted Officer Jackson, a union steward, about his availability to act as a union steward on May 1, 2008. The Town contends that approximately 10-15 minutes later, Captain Thomas brought Officer Jackson to a conference room and advised him that Captain Thomas and Captain Feole were going to interview Association members in connection with an internal investigation into the possibly improper use of a contractual cleaning benefit. The Town asserts that neither Officer Jackson nor the employees being interviewed objected to Officer Jackson's role in the

process or requested a different Association representative. The Town asserts that Officer Jackson also acted as the Association's representative in additional investigative interviews conducted on May 2 and May 5, 2008.

The Town contends that there is no violation of Weingarten rights in this case because there were no objections to Officer Jackson's service as Association representative and there were no requests for a different Association representative. The Town also denies that Officer Jackson was asked to attend the investigative interviews as a union steward because of his alleged lack of training or expertise. The Town also denies that it improperly interviewed Officer Houle as part of the Internal Investigation.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Town violated the Weingarten rights of Association members and committed an unfair labor practice on account of the manner in which the police department involved Officer Jackson as union steward in the investigatory interviews?

2. Whether the Town violated the Weingarten rights of Association members if there were no objections to Officer Jackson's service as the Association representative during the investigatory interviews and there were no requests to have a different Association representative?

WITNESSES

For the Association:

1. Officer John Hall
2. Officer Scott Tompkins
3. Officer Andrew Turgeon
4. Captain Vernon Thomas
5. Officer Frank Stoncius
6. Officer Dana Park

7. Officer Kennedy Richard
8. Officer Kevin Jackson
9. Officer Joyce Chadwell
10. Officer Andrew Faucher
11. Officer Michael Houle
12. The Association reserves the right to amend this list with reasonable notice to the Town.

For the Town:

1. Captain Vernon Thomas
2. Captain George Feole
3. Officer Michael Houle
4. Officer Kevin Jackson

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 Association:

1. CBA
2. Department Regulations and Policies
3. Letters of Reprimand
4. Copies of Internal Investigations

For the Town:

1. CBA
2. Union Bulletin Board Posting

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.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. The parties shall prepare and file a statement of stipulated facts on or before September 18, 2008.
2. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before September 12, 2008. The parties shall 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.
3. The Town shall provide to the Association copies of Department Regulations and Policies and any documents referenced in the Letters of Reprimand reviewed at the pre-hearing conference on or before September 5, 2008.
4. The Town shall provide to the Association copies of the Internal Investigation files concerning the underlying internal investigation at issue in this case and which reference Officer Houle on or before September 5, 2008.
5. The parties shall discuss the contents of the Internal Investigation file and attempt to resolve by agreement any additional requests for copies of the file the Association may have and in the absence of agreement the Association may make an appropriate filing with the board on or before September 18, 2008 requesting that the Town produce copies of additional documents from the Internal Investigation file.

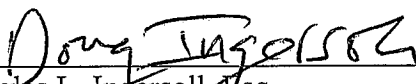
6. On or before September 19, 2008 the parties shall file a short pre-hearing memorandum concerning management and union obligations and duties with respect to Weingarten rights in general, and specifically with respect to investigative interviews such as the ones at issue in this case in circumstances where: 1) the bargaining unit employee being interviewed did not request union representation; 2) the bargaining unit employee being interviewed did not object to union representation provided by a union steward who attended the interviews after being notified of the interviews by management as alleged in this case; and 3) neither the bargaining unit employee nor the union steward requested any delay or postponement in the interview process in order to arrange for the attendance of a union representative with more experience and/or expertise.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **September 23, 2008 at 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time 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 hearing.

So ordered.

August 22, 2008.



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

Distribution:

J. Joseph McKittrick, Esq.
Thomas M. Closson, Esq.