



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEPBA LOCAL 255/NH
SUPERVISORY CORRECTIONS OFFICERS

COMPLAINANT

CASE NO. S-0438-3

v.

DECISION NO. 2008-178

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF CORRECTIONS

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: September 8, 2008 at the PELRB in Concord.

Appearances: Kevin E. Buck, Esq.,
NEPBA Local 255/NH Supervisory Corrections Officers

John C. Vinson, Esq.,
State of New Hampshire, Department of Corrections

Background:

The NEPBA Local 255/NH Supervisory Corrections Officers (the "Union") filed an unfair labor practice complaint against the State of New Hampshire, Department of Corrections on August 1, 2008. The Union complains that the State has improperly failed to bargain changes

to "shift briefing" pay. Shift briefing pay consists of overtime wages paid for a 15 minute pre-shift briefing. The Union contends that Commissioner William L. Wrenn's February 1, 2008 Policy and Procedure Directive 5.11 ("PPD 5.11") unilaterally and improperly changed certain bargaining unit employees entitlement to attend "live" or "bulletin board"¹ shift briefings and receive the resulting overtime pay. The Union contends that the subject of shift briefing pay is a term and condition of employment and is a mandatory subject of bargaining pursuant to RSA 273-A:3 and that the State has violated RSA 273-A:5(e) and (g). The Union also contends that certain bargaining unit employees are entitled to attend and receive shift briefing pay under the terms of the parties' collective bargaining agreement and past practice until such time as the parties bargain a different arrangement.

~~The Union requests that the Board: a) find the State in violation of RSA 273-A:3 and 5(e)~~ and (g); b) order the State to rescind the change Policy and Procedure Directive 5.11 and return to the status quo; c) order the State to bargain in good faith with the Union regarding any changes to policy and procedure which effect the terms of employment of Union membership; and d) order payment of costs, including attorney fees incurred by the Union, and such other relief as the Board deems adequate and necessary.

The State filed its answer on August 18, 2008 and denies the complaint. The State contends that it did not act unilaterally because the disputed PPD 5.11 changes, which provide that the Warden determines which employees are required to attend briefing and roll call, were made following meetings and conferrals with representatives of the New Hampshire State Employees Association, the predecessor Union. The State also contends that it acted within its management rights in making the disputed PPD 5.11 changes in accordance with Article 2.1 of

¹ There are live briefings for regular shifts and bulletin board briefings for irregular shifts. Irregular shifts start and end at different times than do regular shifts.

the parties' collective bargaining agreement. At the pre-hearing the State also cited Articles 6.1.4 and 27.10 in further support of its position.

The State requests that the Board deny the complaint and grant such other and further relief as the Board deems just.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether changes to PPD 5.11 concerning the identification of employees required to attend pre-shift briefings is a mandatory subject of bargaining.
2. Whether past practice or collective bargaining agreement provisions obligate the State to bargain any changes to the disputed PPD 5.11.

WITNESSES

For the Union:

1. Lt. Paul Cascio
2. Lt. Neil Smith
3. Local President Leavitt Barton
4. Lt. Robert Gauthier

For the State:

1. Thomas Manning
2. Commissioner William Wrenn
3. Warden Dick Gerry

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. Demand to Bargain Letter
2. Dept. of Corrections PPD 5.11, 5-15-07
3. Dept. of Corrections PPD 5.11, 2-15-04
4. Dept of Corrections Labor meeting minutes

For the State:

1. 2-1-08 PPD 5.11
2. 5-15-07 PPD 5.11
3. 4-23-07 Labor Management Committee Meeting Minutes
4. 7-10-07 Labor Management Committee Meeting Minutes
5. 12-12-07 Labor Management Committee Meeting Minutes
6. 5-15-08 NEPBA letter to Commissioner Wrenn

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. On or before September 22, 2008 the Union shall file an amendment to its complaint stating in more detail its claim that the State is obligated to bargain the disputed changes to PPD 5.11 according to past practice.
2. The deadline for Local 250, the non-supervisory corrections officers unit, to join these proceedings as a party by an appropriate motion to intervene is September 22, 2008. This

motion shall include any request for a further pre-hearing conference. Representatives for Local 255 shall inform representatives of Local 250 of this deadline.

3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before October 3, 2008.

4. The parties shall prepare and file a statement of stipulated facts and a list of agreed upon exhibits on or before October 8, 2008.

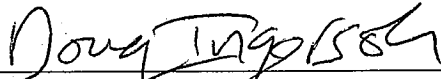
5. The parties shall mark all exhibits before hearing as agreed upon or for identification and have sufficient copies available for distribution at the hearing and also file their exhibits electronically as required by Pub 203.02.

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 **October 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.

September 8, 2008.



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

Distribution:
Kevin E. Buck, Esq.
John C. Vinson, Esq.