



**State of New Hampshire**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**AFSCME COUNCIL 93, LOCAL 1386,  
PORTSMOUTH CITY EMPLOYEES**

**COMPLAINANT**

**and**

**CASE NO. G-0030-9  
DECISION NO. 2008-184**

**CITY OF PORTSMOUTH**

**RESPONDENT**

**ORDER ON REQUEST FOR IMMEDIATE CEASE AND DESIST ORDER**

On August 29, 2008 AFSCME Council 93, Local 1386, Portsmouth City Employees (the "Union") filed an unfair labor practice charge together with a request for an immediate cease and desist order. The Union complains that the City improperly failed to fill an open bargaining unit position (Heavy Equipment Operator) with a bargaining unit member and requests that the City be ordered to cease and desist with the implementation of the disputed hiring. The Union has filed copies of the portions of the collective bargaining agreement<sup>1</sup> upon which it relies to support its request for an immediate cease and desist order and the City filed its response to the request for a cease and desist order and its answer, all as required by Decision 2008-176. The

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<sup>1</sup> Article 5.2 Posting Jobs and Vacancies and Article 5.6 Competitive Examination.

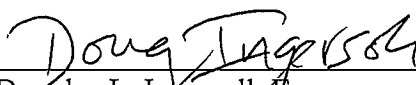
parties' filings reflect that the outside candidate hired by the City began employment on September 8, 2008.

The Union's request for a cease and desist is denied for a number of reasons. First, this case arises from a dispute concerning the parties' collective bargaining agreement and accordingly there is a genuine issue as to whether this dispute should be addressed through the parties' grievance process, and not through an unfair labor practice charge based upon an alleged breach of a collective bargaining agreement. Additionally, while Article 5.2 and 5.6 of the parties' collective bargaining agreement appear to provide for hiring from within the bargaining unit, the City contends that that the parties have interpreted and applied these provisions to allow for the hiring of employees who are outside the bargaining unit, even when there are internal candidates. Finally, assuming the Union prevails on the merits of this dispute, either at the PELRB or through the grievance process, there are potential remedies, such as the award of back pay, pay differential, and/or the award of the disputed or a comparable position to the qualified bargaining unit employee whom the Union claims should have filled the position. The possibility of such remedies suggests that this is not a case of irreparable harm requiring the immediate issuance of a cease and desist order.

So ordered.

September 16, 2008

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Hearing Officer