



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EXETER POLICE ASSOCIATION

COMPLAINANT

CASE NO. P-0753-17

v.

DECISION NO. 2008-197

TOWN OF EXETER

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: September 29, 2008 at the PELRB in Concord.

Appearances: J. Joseph McKittrick, Esq.
Daniel P. Schwarz, Esq.

Background:

Exeter Police Association (the "Association") filed an unfair labor practice complaint on August 13, 2008.¹ According to the Association, Town police officers work a 4 days on/2 days off schedule, resulting in a 32 hour work week every 6 weeks. The Association contends that the practice has always been to pay officers wages based upon a 40 hour week, even during the 32 hour work week. The Association complains that the Town has unilaterally and

¹ The complaint is, in substance, the same as the complaint filed in Case No. P-0753-15. The earlier complaint was dismissed on November 27, 2007 because the Association had not completed the grievance process, including advisory arbitration, as provided for in the parties' collective bargaining agreement. See PELRB Decision No. 2007-162.

improperly changed this practice and now pays officers wages based upon 32 hours during the 32 hour work weeks.

The Association also complains that the Town has discontinued established shift swap and flex schedule practices. The Association contends that historically officers have been permitted to shift swap without restriction and regardless of the time period within which the shift swap was completed. Under this arrangement an officer who worked an extra shift in a current pay period might not complete the shift swap until several pay periods or more in the future, when the second officer involved in the shift swap would work one of the first officer's shifts. With respect to the flex schedule issue, the Association contends that detectives have always been allowed to work a flexible schedule, even if the arrangement resulted in a detective working 16 hours in a single day to compensate for time scheduled but not worked.

The Association claims that the Town's actions violate RSA 273-A:5, I (a), (c), (d), (e), (g), (h) and (i). As remedies, the Association seeks reinstatement of the previous practices pending satisfactory negotiations, repayment of all lost monies, incidental damages, consequential damages, and attorney fees.

The Town filed its answer on August 28, 2008. The Town does not dispute that prior to early 2007 officers were paid the same amount for the 32 hour work as they were for the 40 hour work week and that the swap and flexible schedules operated as described by the Association. However, the Town claims that the Association decided to unilaterally withdraw from these arrangements by, among other things, prosecuting a complaint with the New Hampshire Department of Labor. According to the Town, the Department of Labor proceedings require that the Town alter the pre-existing arrangements concerning wages paid during the 32 hour work week, shift swap, and flexible scheduling in order to remain compliant with applicable wage and

hour laws. The Town requests dismissal of the complaint and reimbursement of its fees and expenses.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the Town unilaterally and improperly changed established practices concerning payment of wages during the 32 hour work week, shift swaps, and flexible scheduling for detectives?

WITNESSES

For Exeter Police Association:

1. Patrick Mulholland
2. Town Manager Russell Dean
3. Cynthia Flynn, NH Department of Labor
4. All Witnesses Listed by the Town

For the Town of Exeter:

1. Richard Kane, Chief of Police
2. Kenneth O'Shaughnessy, NH Department of Labor
3. Thomas Flygare, Esq.

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 Exeter Police Association:

1. Current CBA
2. Advisory Arbitration Award
3. Underlying Grievance and Arbitration Documents

4. All documents listed by the Town

For the Town of Exeter:

1. Grievances on same issue
2. Documents of DOL investigation
3. Any documents identified by the Union
4. Lawsuit in Superior Court on same issue
5. Documents used in Arbitration

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

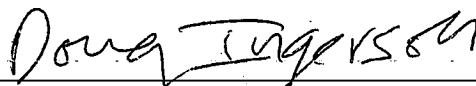
1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case.
2. The parties shall prepare and file a statement of stipulated facts on or before November 21, 2008.
3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before November 21, 2008.
4. 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.
5. The parties shall attempt to narrow the matters in dispute in this case by conferring with regard to the shift swap and flexible schedule issues to explore whether agreements can be reached which simplify or eliminate those issues.

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 **December 16, 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 30, 2008



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

Distribution:

J. Joseph McKittrick, Esq.
Daniel P. Schwarz, Esq.