



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

RAYMOND PORELLE, JR.

COMPLAINANT

CASE NO. P-0749-34

v.

DECISION NO. 2008-226

NEPBA, INC.

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: November 6, 2008

Appearances: Complainant: Raymond Porelle, Jr.
Respondent: Diane Byrnes, Esq., NEPBA

Background:

The parties appeared for a further pre-hearing with attorney Peter Perroni in attendance as well. Mr. Porelle filed an unfair labor practice complaint on May 29, 2008 alleging that the NEPBA, Inc. breached its duty of fair representation. Mr. Porelle's complaint is based on the NEPBA's alleged agreement to provide him with representation in a matter pending before the New Hampshire Retirement System. The NEPBA filed its answer on June 13, 2008 denying Mr. Porelle's claim and raising a number of affirmative defenses, such as the statute of limitations and failure to exhaust administrative remedies.

At the further pre-hearing, the NEPBA submitted a copy of the November 19, 2007 settlement agreement in dispute. NEPBA contends that it is providing Mr. Porelle with representation in the arbitration matter referenced in paragraph 1 of the agreement, but that it is not obligated to represent Mr. Porelle in the New Hampshire Retirement System matter under the agreement or otherwise.

ISSUE FOR DETERMINATION

Whether the NEPBA is obligated under the November 19, 2007 Settlement Agreement to represent Mr. Porelle in the New Hampshire Retirement System matter?

WITNESSES

For Raymond Porelle, Jr.:

1. Raymond Porelle, Jr.
2. Peter Perroni, Esq.

For the NEPBA:

1. Raymond Porelle, Jr.
2. Bryan McMahan

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 Raymond Porelle, Jr.:

1. NHRS documents
2. Correspondence to the NHRS and NEPBA
3. Email from NEPBA, the City Attorney, and Attorney Perroni

For the NEPBA:

1. CBA
2. Documents from NHRS
3. November 19, 2007 Settlement and Release
4. Email from Mr. Porelle
5. Correspondence to Mr. Porelle

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 December 3, 2008. Based upon the discussions at the pre-hearing, it appears that the parties can prepare a fairly comprehensive fact stipulation. Objections to the admissibility of any particular fact stipulation is not a basis for refusing to stipulate to an otherwise uncontested fact, although it is expected that the parties will not seek fact stipulations as to matters which are plainly irrelevant. The written fact stipulation shall include a statement of a party's relevancy objection immediately following the stipulated fact. The board will address any such relevancy objection to a stipulated fact to the extent necessary in connection with its decision.
3. On or before December 3, 2008 the parties shall notify the board if this matter can be submitted on the parties' stipulated facts without the need for an evidentiary hearing.

4. If this matter is to proceed to an evidentiary hearing, the parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before December 3, 2008. The parties shall also pre-mark all exhibits for identification or as full exhibits by agreement prior to the time of hearing and have sufficient copies available for distribution at the hearing 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 **December 17, 2008 @ 10:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 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.

November 6, 2008



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

Distribution:
Mr. Raymond Porelle, Jr.
Diane Byrnes, Esq.
Peter Perroni, Esq.