



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEW HAMPSHIRE TROOPERS
ASSOCIATION / TROOPER
JOHN MIRABELLA**

COMPLAINANT

CASE NO. P-0754-25

v.

DECISION NO. 2008-258

**NEW HAMPSHIRE DEPARTMENT
OF SAFETY, DIVISION OF STATE
POLICE**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: December 15, 2008

Appearances: John Krupski, Esq. for the Complainant
Marta Modigliani, Esq. for the Respondent

Background:

The New Hampshire Troopers Association and John Mirabella filed an unfair labor practice complaint against the New Hampshire Department of Safety, Division of State Police on October 8, 2008. According to the complaint, Mr. Mirabella was hired as a State Trooper on August 10, 2007 and terminated on August 9, 2008. At the time in question, he was assigned to Troop E, Patrol Area 2. The Association claims in the complaint that Mr. Mirabella was not a probationary employee under RSA 273-A:1, IX (d) because he had worked for the Department

of Safety as a marine patrol officer for approximately 5 years before beginning work as a State Trooper. At the pre-hearing, counsel for the Association also contended that Mr. Mirabella had an individual contract with the State and was not a probationary employee on that basis as well.

The Association claims Mr. Mirabella was terminated because of his alleged failure to satisfy the residency requirement imposed by the parties' Collective Bargaining Agreement, specifically Section 21.7, which provides:

Any employee may live within a town within a patrol area to which she/he is assigned or within a reasonable distance from his/her assigned patrol area.

The Association contends the Section 21.7 reference to "patrol area" means the Troop E area and consistent with past practice Mr. Mirabella was entitled to live within the Troop area or within a reasonable distance of the troop area. The Association also claims that prior to his termination Mr. Mirabella met the State's requirement that he provide written confirmation of residency within Patrol Area 2 of Troop E, in which case the State represented that it would not terminate Mr. Mirabella.

The Association and Mr. Mirabella requests that the PELRB: 1) declare that the State committed an unfair labor practice and violated Section 21.7 of the CBA and RSA 273-A:5(h) when it terminated Mr. Mirabella; 2) order the State to restore Mr. Mirabella to his employment at the Department of Safety and award him back pay for all income lost by Mr. Mirabella; and 3) order such other and further relief as may be just.

The State filed its answer on October 23, 2008. The State contends that Mr. Mirabella was a probationary employee at the time of his termination and at most is entitled to a review of his termination before the Personnel Appeals Board pursuant to RSA 21-I:58 in accordance with Per 1002.02, Dismissal During Probationary Period. Mr. Mirabella has an appeal pending before the Personnel Appeals Board and the State contends the PELRB lacks jurisdiction and that the

Association and Mr. Mirabella have otherwise failed to state a claim upon which relief can be granted on account of Mr. Mirabella's probationary status at the time of his termination.

The State requests that the PELRB: 1) dismiss the complaint or, in the alternative; 2) declare that the State did not commit an unfair labor practice; and 3) order such other and further relief as it deems just.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether this matter should be dismissed upon a determination that at the time of his termination Mr. Mirabella was a probationary employee within the meaning of RSA 273-A:1, IX (d) or because of the Personnel Appeals Board proceeding?
2. If not, whether the State improperly terminated Mr. Mirabella given the language contained in Article 21.7 of the parties' collective bargaining agreement, past practice, and Mr. Mirabella's representations concerning his residency as of August 9, 2008?

WITNESSES

For the Association and John Mirabella:

1. John Mirabella
2. Louis Copponi
3. Bill Graham
4. Carol Gartland
5. Kathleen Lord
6. Michael Doucette
7. Bruce Twyon

For the State:

1. Colonel Frederick Booth
2. Major Susan Forey
3. Lt. Harry Nedeau
4. Captain Mark Myrdek
5. Sgt. Kevin Duffy
6. Sgt. James Lagace

7. Thomas Manning
8. Kevin O'Brien, Chief

EXHIBITS

For the Association and John Mirabella:

1. Collective Bargaining Agreement
2. Letter from Kathleen Lord
3. Written Record

For the State:

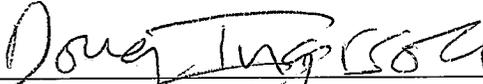
1. Relevant personnel documents
2. Personnel rules
3. CBA agreement
4. Rules and regulations

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case.
2. Motions to dismiss, if any, shall be filed on or before December 22, 2008 and objections shall be filed on or before December 29, 2008. The parties were notified of these dates at the pre-hearing conference.
3. As discussed at the pre-hearing, another pre-hearing conference will be conducted on **December 29, 2008 at 9:00 a.m.** to address the consolidation of this case with Case No.s P-0754-23 and 24. A further pre-hearing order will issue following the December 29, 2008 conference.
4. Subject to review at the December 29, 2008 conference, this matter remains scheduled for hearing on **January 8, 2009 at 9:30 a.m.**

So ordered.

December 17, 2008



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

Distribution:

John Krupski, Esq.
Glenn R. Milner, Esq.
Marta Modigliani, Esq.