



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION,
INC.**

COMPLAINANT

CASE NO. G-0117-1

v.

DECISION NO. 2009-228

**NEW HAMPSHIRE, DEPARTMENT
OF SAFETY**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: October 19, 2009 at the PELRB in Concord.

Appearances: Kevin E. Buck, Esq.,
NEPBA

Nancy J. Smith, Esq.
State of New Hampshire, Dept. of Justice

Marta Modigliani, Esq.
State of New Hampshire, Dept. of Safety

Background:

The New England Police Benevolent Association, Inc. ("NEPBA") represents all rank and file Regulatory State Troopers, Local 50 (formerly Highway Patrol Officers) and supervisory Regulatory State Troopers, Local 55 (formerly Highway Patrol Officers). On September 1, 2009 the NEPBA filed an unfair labor practice complaint against the New Hampshire Department of

Safety, claiming that management has encouraged Regulatory State Troopers to withdraw from NEPBA membership and attempt decertification of the NEPBA. The NEPBA also states that these actions occurred during contract negotiations, that Regulatory Troopers are entitled to pay and benefit parity with the New Hampshire State Police Troopers, and that management suggested or promised that by withdrawing from the NEPBA or decertifying Regulatory State Troopers could obtain pay and benefit parity with the New Hampshire State Police Troopers.

The NEPBA claims the State's actions violate RSA 273-A:5, I (a), (b), (c), (e), and (g). As relief, the NEPBA requests that the PELRB order the State to : 1) cease and desist from its unlawful practice; 2) compensate NEPBA bargaining unit members at the same rate as other like employees working for the State; 3) award NEPBA its costs incurred while the State has negotiated in bad faith; 4) award NEPBA damages, including lost membership dues, attorney fees and costs; and 5) grant such other relief as the board deems appropriate.

The State filed its response on September 4, 2009 and generally denies the charges. The State asserts that a NEPBA Local 50 bargaining unit member made general and unsolicited inquiries with management concerning the consequences of decertification of the NEPBA relative to seniority and pay. According to the State, these inquiries were referred to and answered by the Division of Personnel. As to collective bargaining, the State asserts that its bargaining team has made clear that agreement on furloughs was required before other issues could be addressed. The State requests that the PELRB find that the State did not commit an unfair labor practice and dismiss the charge.

ISSUE(S):

Based upon the parties' filings and the pre-hearing conference, the issue is: Whether the State interfered with the NEPBA's status as certified exclusive representative, engaged in direct

dealing with employees, and failed to bargain in good faith with the NEPBA, all on account of its conduct at the bargaining table and its alleged dealings with certain Regulatory State Troopers as to matters such as terms and conditions of employment and decertification of the NEPBA.

WITNESSES

For the Union:

1. Commissioner John J. Barthelmes
2. Assistant Commissioner Earl M. Sweeney
3. Colonel Frederick H. Booth
4. Thomas Manning, Assistant Secretary of State
5. Trooper Todd Ferris, former President, NEPBA Local 50
6. Sergeant Steve Kace, Local 55
7. Trooper Richard Dupont, current President, NEPBA Local 50
8. Wayne Perreault, former Captain, NH State Police
9. Ron Scaccia, NEPBA
10. Sergeant Jeffrey Caulder, NEPBA Local 55

For the State:

1. Commissioner John J. Barthelmes
2. Assistant Commissioner Earl M. Sweeney
3. Colonel Frederick H. Booth
4. Major Russell Conte, Commander Troop G (Regulatory State Troopers)
5. Director Karen Hutchins, Director Personnel
6. Thomas Manning, Assistant Secretary of State
7. TFC William Graham, current President, NHTA

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

Agreed to:

1. Collective Bargaining Agreement between the Division and NEPBA Local 50
2. Collective Bargaining Agreement between the Division and NEPBA, Local 55
3. January 9, 2009 Memorandum from Commissioner Barthelmes

For the Union:

1. 11/29/07 Correspondence from Karen Hutchins to Commissioner
2. 12/24/07 Memorandum from Nancy J. Smith, Esq. to Commissioner

For the State:

1. Various Emails
2. Governor and Council Reorganization Letter
3. New Hampshire Troopers Association letter to Commissioner dated November 5, 2007
4. Correspondence from NEPBA, Local 55
5. Draft Letter to Commissioner dated January 10, 2008
6. Correspondence from NEPBA, Local 50
7. Memo from Major Perreault dated January 9, 2008

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 filed electronically and submitted to the presiding officer in accordance with Pub 203.03. 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. On or before October 23, 2009 the NEPBA shall file a specification, setting forth in greater detail the specifics of the allegations referenced in paragraphs 4-6 of the complaint. The specification shall identify by name and title the individuals whom the NEPBA contends

conduct at issue, the date and substance of such conduct, any related documentation, and which provisions of RSA 273-A:5, I were allegedly violated by such conduct.

2. On or before October 30, 2009 the State shall file its response to the NEPBA's specification, and include detailed information as to the identification of involved individuals, the substance and date of the conduct at issue according to the State, and reference to any related documentation.

3. On or before November 3, 2009 the parties shall file their final witness and exhibit lists.

4. On or before November 5, 2009 the parties shall file their Stipulation of Facts and Exhibits. It is expected that the parties' fact stipulation will contain significantly greater content than the statement of uncontested facts set forth in the Joint Pre-Hearing Worksheet.

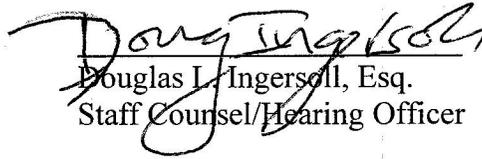
5. At the pre-hearing conference the parties explained that the two day hearing request contained in the Joint Pre-Hearing Worksheet was based upon NEPBA's representation that one day was required for the presentation of its case. However, based upon discussion at the pre-hearing conference, including the effective use of a Stipulation of Facts, it appears that one day of hearing should be sufficient for both parties to present their case in this matter.

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 **November 10, 2009 at 9:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is six 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.

October 19, 2009


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

Distribution:

Kevin E. Buck, Esq.

Peter J. Perroni, Esq.

Nancy J. Smith, Esq.

Marta Modigliani, Esq.