



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association, IUPA, AFL-CIO

and

Town of Deerfield

Case No. G-0139-1

Decision No. 2010-168

Order on Town's Motion for Review of Hearing Officer Decision

The Town has moved for review of the hearing officer decision in this matter pursuant to Pub 205.01, which provides in part as follows:

(b) The board shall review whether the hearing officer has misapplied the applicable law or rule or made findings of material fact that are unsupported by the record and the board's review shall result in approval, denial, or modification of the decision of the hearing officer. The board's review shall be made administratively based upon the hearing officer's findings of fact and decision and the filings in the case and without a hearing or a hearing de novo unless the board finds that the party requesting review has demonstrated a substantial likelihood that the hearing officer decision is based upon erroneous findings of material fact or error of law or rule and a hearing is necessary in order for the board to determine whether it shall approve, deny, or modify the hearing officer decision or a de novo hearing is necessary because the board concludes that it cannot adequately address the request for review with an order of approval, denial, or modification of the hearing officer decision. All findings of fact contained in hearing officer decisions shall be presumptively reasonable and lawful, and the board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.

The Town argues the hearing officer should have found that the Corporal position exercises "supervisory authority involving the significant exercise of discretion" and therefore should be excluded from the bargaining unit pursuant to RSA 273-A:8, II. The Town also

argues that the hearing officer erred by finding that the proposed bargaining unit satisfied the ten employee minimum under RSA 273-A:8, I.

Under Pub 205.01 all of the hearing officer's findings of fact are presumptively reasonable and lawful, and the Board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.¹ The Town has not submitted such a transcript and accordingly the hearing officer's findings of fact are not subject to review.

The board concludes that the hearing officer properly considered whether the ten employee minimum was satisfied as of the date the petition was filed. Additionally, although not necessary to the hearing officer's conclusion regarding the number of members in the bargaining unit as of the date of the filing of the petition, the Findings of Fact reflect that as of May 7, 2010, the date of the adjudicatory hearing, the Town intended to fill the vacant patrolman position, the position was funded, and the department was advertising the vacant position and interviewing candidates. The hearing officer has not misapplied applicable law or rule. The Town's motion is denied.

So ordered.

September 23, 2010


Jack Buckley, Chair

By unanimous decision of board members Jack Buckley, Kevin E. Cash and Sanford Roberts, Esq.

Distribution:
Kevin E. Buck, Esq.
Robert Upton II, Esq.

¹ The Town has appended material to its motion relating to Town activity that occurred in July, 2010, nearly three months after evidence was accepted into the record at the May 7, 2010 adjudicatory hearing. As such it is not part of the record upon which the hearing officer decision was made, and it is not included within the hearing officer's findings of fact.