



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**New England Police Benevolent Association, Local 11**

**v.**

**City of Portsmouth Police Commission**

**Case No. G-0147-1**

**Decision No. 2010-172**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: September 24, 2010

Appearances: Kevin E. Buck, Esq. for the New England Police Benevolent Association, Local 11

Thomas J. Flygare, Esq. for the City of Portsmouth Police Commission

**Background:**

The New England Police Benevolent Association, Local 11 (Union) filed an unfair labor practice complaint against the City of Portsmouth Police Commission (City) on August 16, 2010. The Union claims that the City committed an unfair labor practice in violation of RSA 273-A:5, I (e), (h), and (i) by unilaterally changing the City Ordinance related to construction work requiring uniformed policemen which allegedly resulted in change in terms and conditions of bargaining unit members' employment. The Union requests that the PELRB find the City in violation of RSA 273-A:5, I (e), (h), and (i); order the City to return to status quo and bargain with the Union in good faith over the terms and conditions of employment; order the City to

adhere to the terms of the collective bargaining agreement (CBA); and order payment of costs, including attorney's fees incurred by the Union.

The City denies the charges and requests that the PELRB dismiss the charge with prejudice and order the Union to reimburse the City for its fees, expenses, and lost time in responding to the charge.

On September 7, 2010 the City filed a motion to dismiss. The City argues that the PELRB lacks jurisdiction because the issues in the complaint are primarily contractual, the parties' CBA provides for final and binding arbitration, and the Union has filed a grievance on the same issue. The City also argues that the Union failed to comply with the Pub 201.02 (b) (4) and (6). The Union objected to the motion to dismiss asserting that the issues in this case involve more than a contractual dispute and that the arbitrator does not have the power to grant relief requested by the Union.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over the Union's claims.
2. Whether the City's actions in unilaterally changing the City Ordinance relating to the construction work requiring uniformed policemen constitute an unfair labor practice in violation of RSA 273-A:5, I (e), (h), and/or (i).

#### WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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. 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. 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

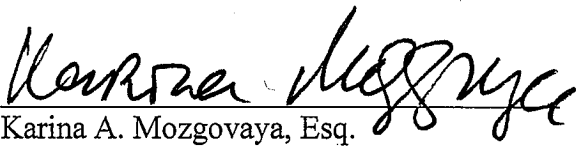
1. "Parties" means the City, the Union, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. During the pre-hearing conference the Counsel for the Union moved to continue the adjudicatory hearing pending the resolution of the arbitration. The Counsel for the City objected to the continuance and argued that the matter should be dismissed because the PELRB lacks jurisdiction to hear this matter. The Union's motion is denied without prejudice at this time.
3. The parties shall prepare and file a final statement of stipulated facts on or before **October 18, 2010**. In order to reduce the number of witnesses and amount of evidence to be presented at the hearing, the parties shall stipulate to the extent possible to matters such as the impact of the amended Ordinance on wages and reasons why the City amended the Ordinance. Any relevancy objections shall be stated at the end of a particular stipulation using language such as the following: "The Union/the City objects to the stipulation on the ground of relevancy."
4. The parties shall exchange and file their final Witness and Exhibit lists on or before **October 18, 2010**.

**HEARING**

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **October 26, 2010 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 3 hours. If either party believes that additional time is required, a 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 24, 2010

  
Karina A. Mozgovaya, Esq.  
Staff Counsel/Hearing Officer

Distribution:  
Kevin E. Buck, Esq.  
Thomas J. Flygare, Esq.