



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

**AFSCME, Council 93, Local 3657/Hillsborough County Sheriff's Department**

v.

**Hillsborough County Sheriff's Department**

**Case No. G-0012-14**  
**Decision No. 2010-216**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: November 22, 2010

Appearances: Karen E. Clemens, Esq. for the AFSCME, Council 93, Local 3657/Hillsborough County Sheriff's Department

Carolyn M. Kirby, Esq. for the Hillsborough County Sheriff's Department

**Background:**

The AFSCME Council 93, Local 3657/Hillsborough County Sheriff's Department (AFSCME) filed an unfair labor practice complaint against the Hillsborough County Sheriff's Department (County) on September 22, 2010. The Association claims that the County has improperly withheld 2.1% wage increase to which bargaining unit members were allegedly entitled under the parties' collective bargaining agreement (CBA) and RSA 273-A:12, VII. The AFSCME requests that the PELRB order the County to make the affected bargaining unit members whole.

The County denies the charges. The County asserts that the bargaining unit members are not entitled to the wage increase because the CBA has expired on June 30, 2010 and RSA 273-A:12, VII, the so called "evergreen" statute, does not apply as the parties' 2008-2010 agreement

was ratified and became effective prior to July 15, 2008, the effective date of the statute, even though the agreement was not signed until September. The County also argues that the AFSCME failed to identify the specific provisions of RSA 273-A:5 in its complaint and that the Association filed a grievance which mirrors the unfair labor practice complaint and should not be allowed to proceed on the same issue in both forums. The County requests that the PELRB dismiss the unfair labor practice complaint.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the parties' 2008-2010 collective bargaining agreement was "entered into" prior to July 15, 2008 within the meaning of RSA 273-A:12, VII.
2. Whether the County has committed an unfair labor practice in violation of RSA 273-A:5 when it failed to pay wage increase in accordance with 2008-2010 collective bargaining agreement.

#### 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 AFSCME, the County, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.


2. The AFSCME shall amend its complaint in accordance with the requirements of Pub 201.02. The amended complaint shall be filed on or before **November 24, 2010** and shall contain a "clear and concise statement of the facts giving rise to the complaint, including the date, time and place of the occurrence, and the names of all persons involved in or witnessing the occurrence, characterizing each particular act in terms of the specific provision(s) of RSA 273-A:5 or RSA 273-A:6 alleged to have been violated." See Pub 201.02 (b).
3. The parties shall exchange and file their final witness and exhibit lists and a comprehensive statement of stipulated facts no later than **December 3, 2010**.
4. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

#### 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 **December 7, 2010 at 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 hours.

So ordered.

November 22, 2010

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

Distribution:  
Carolyn M. Kirby, Esq.  
Karen E. Clemens, Esq.