



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

**New England Police Benevolent Association, Local 250**

v.

**State of New Hampshire, Department of Corrections**

**Case No. G-0109-3**

**Decision No. 2011-021**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: January 14, 2011

Appearances: Kevin E. Buck, Esq. for the New England Police Benevolent Association, Local 250<sup>1</sup>

Lynmarie C. Cusack, Esq. for State of New Hampshire, Department of Corrections

Background:

New England Police Benevolent Association, Local 250 (NEPBA) filed an unfair labor practice complaint against the State of New Hampshire, Department of Corrections (DOC) on December 7, 2010. The NEPBA alleges that the DOC violated RSA 273-A:5, I (e) and (g) when it unilaterally ceased compensating the employees for the time they utilized to undergo the mandatory physical fitness testing. The NEPBA requests that the PELRB find the DOC in

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<sup>1</sup> Attorney Buck participated via telephone.

violation of RSA 273-A:5, I (e) and (g), order the DOC to cease and desist and return to the status quo, and order payment of costs, including attorney fees, incurred by the NEPBA.

The DOC denies the charges claiming that, under Administrative Rules Pol 404.06 and 404.07, employees are responsible for the cost of physical fitness testing and that, although some employees were compensated in the past, the DOC has never adopted a policy authorizing compensation for attendance of physical fitness testing. The DOC requests that the PELRB dismiss the complaint.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the DOC unilaterally ceased compensating employees for participating in the mandatory physical fitness testing.

2. Whether the DOC committed an unfair labor practice in violation of RSA 273-A:5, I (e) and (g) when it ceased compensating employees for participating in the mandatory physical fitness testing.

#### WITNESSES for COMPLAINANT

1. David Kelly
2. Stephen Isabelle

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1. Commissioner William Wrenn
2. Warden Richard Gerry
3. Mindy Normand
4. Donald Vittum

The 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 lists will be available at the hearing.

#### JOINT EXHIBITS

1. Collective bargaining agreement
2. Step grievance letters

#### EXHIBITS

Despite requesting, and being granted, an extension of time to file a Joint Pre-Hearing Worksheet, the parties failed to identify exhibits, as required under Pub 202.01, and they were not excused from doing so by any order of the PELRB. The parties' failure to identify the exhibits is not justified by their claim that they lacked sufficient time to prepare exhibit lists as the parties have been granted an extension they requested. See PELRB Decision No. 2011-011.

#### DECISION

1. "Parties" means the NEPBA, the DOC, 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 parties referenced grievance proceedings related to this dispute. On or before **January 21, 2011**, the parties shall file a joint report regarding the status and outcome of such proceedings.
3. Any motion to dismiss shall be filed no later than **January 24, 2011**. Any motion to continue an adjudicatory hearing shall be filed no later than **February 7, 2011**.
4. The parties shall exchange and file their final witness and exhibit lists no later than **February 7, 2011**.
5. The parties shall prepare and file a comprehensive statement of stipulated facts no later than **February 7, 2011**.

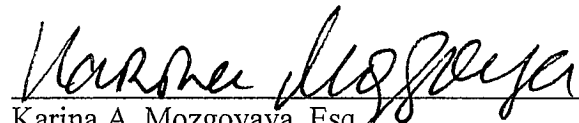
6. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

### **HEARING**

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing between the parties will be held on **February 17, 2011 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.

January 14, 2011

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

Distribution:  
Lynmarie C. Cusack, Esq.  
Kevin E. Buck, Esq.