



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New England Police Benevolent Association

and

Town of North Hampton

and

Teamsters Local 633 of New Hampshire

Case No. G-0003-5

Decision No. 2011-038

Order on Motion for Review of Hearing Officer Decision

The Town has filed a motion for review of hearing officer decision No. 2011-007. Pursuant to that decision, a secret ballot election was conducted to resolve a question of representation of the existing bargaining unit.

Pub 205.01 provides in part as follows:

Review of a Decision of Hearing Officer.

(a) Any party to a hearing or intervenor with an interest affected by the hearing officer's decision may file with the board a request for review of the decision of the hearing officer within 30 days of the issuance of that decision and review shall be granted. The request shall set out a clear and concise statement of the grounds for review and shall include citation to the specific statutory provision, rule, or other authority allegedly misapplied by the hearing officer or specific findings of fact allegedly unsupported by the record.

(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.

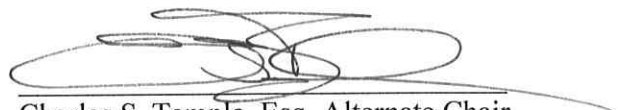
The Board finds that the hearing officer properly applied the applicable law governing the right of a rival union, like the NEPBA in this case, to obtain a secret ballot election during the interval between the expiration of a collective bargaining agreement and any successor collective bargaining agreement.

The Board also finds that the Town was not entitled to a review of its concerns about the composition of the existing bargaining unit in connection with the conduct of the election proceedings in this case. The Town does have the right, in general, to request a review of the appropriateness of the composition of an existing bargaining unit pursuant to Pub 302.05 upon the filing of a petition for modification, but such a petition was not filed in this case. This order is without prejudice to the Town's right to file such a modification petition to request review as to bargaining unit composition issues.

Accordingly, the Town's objections and exceptions to the hearing officer decision are overruled and the Town's motion is denied.

So ordered.

January 26, 2011.



Charles S. Temple, Esq. Alternate Chair

By unanimous vote of Alternate Chair Charles S. Temple, Esq., Board Member Kevin E. Cash and Board Member Carol M. Granfield.

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