



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME, Council 93, Local 3657 Brookline
Police Officers Association (Brookline Police Department)**

v.

Town of Brookline

**Case No. G-0128-5
Decision No. 2012-183**

Order

I. Background:

This is an order on the Union's motion for a cease and desist order pending a hearing on its unfair labor practice charge asserting the Town has violated RSA 273-A:5, I (a,b,c,e,g,h,i). The dispute in this case can be summarized as follows. The Union complains that in the midst of ongoing efforts to bargain a successor contract (the Union has requested mediation in an effort to resolve an impasse in bargaining as per RSA 273-A:12, I), the Town unilaterally suspended the bargaining process and now refuses to recognize and engage with the Union and bargaining unit employees in collective bargaining under RSA 273-A. As reflected in the Town's recent written communications to the Union and to bargaining unit employees, the Town asserts its actions are justified because there are less than 10 employees in the bargaining unit. In its written communication to bargaining unit employees the Town states that it will no longer engage in collective bargaining under RSA 273-A and also selects and describes the terms and conditions of employment under which bargaining unit employees will now work.

The Town objects to the Union's motion and denies that the Union is entitled to any relief pending a hearing. The Town also asserts that a "technical" unfair labor practice is justified in this case as neither the statute nor rules provide a mechanism by which the Town can, in effect, exercise its alleged right to discontinue compliance with RSA 273-A in circumstances where the number of bargaining unit employees falls below 10.

II. Discussion and Order:

The number of employees required for the certification of a bargaining unit is 10, as set forth in RSA 273-A:8, I, which provides in part that "[t]he board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. ...*In no case shall the board certify a bargaining unit of fewer than 10 employees with the same community of interest (emphasis added).* See *Appeal of Town of Deerfield*, 162 N.H. 601 (2011)(whether the 10 employee minimum is met is determined as of the time the PELRB certifies the unit). As reflected in PELRB Decision No. 2001-104 (October 1, 2001)(Certificate of Representative and Order to Negotiate), the unit under consideration in this case was certified years ago. The PELRB's most recent order on the unit dates to 2005. See PELRB Decision No. 2005-058 (April 22, 2005)(Amended Certification of Representative.) The 2005 order provides that that the Union is "the exclusive representative" of employees holding the positions of patrol officer and corporal in the Brookline Police Department. Like the 2001 certification, the 2005 amended certification includes the following language:

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the exclusive representative named herein on terms and conditions of employment for the members of the bargaining unit, as herein described, and shall recognize the right of such exclusive representative to represent employees in the settlement of grievances.

Guidance as to the status of an exclusive representative and bargaining unit subsequent to

PELRB certification proceedings is contained in RSA 273-A:10, VI, which states as follows:

(a) Certification as exclusive representative *shall remain valid until the employee organization is dissolved, voluntarily surrenders certification, loses a valid election or is decertified.*

(emphasis added)

(b) The board shall decertify any employee organization which is found in a judicial proceeding to discriminate with regard to membership, or with regard to the conditions thereof, because of age, sex, race, color, creed, marital status or national origin; or has systematically failed to allow its membership equal participation in the affairs of the employee organization.

(c) Any challenge to a certified exclusive bargaining representative, whether in a decertification election or a challenge by another labor organization, shall result in decertification or change in bargaining representation if decertification or the challenging organization is approved by a majority vote of members of the bargaining unit voting.

Neither RSA 273-A:10, VI nor any other provision of RSA 273-A grant to the public employer the right to ignore and disregard an existing certification in the event the number of employees holding bargaining unit positions falls below 10 at any point in time subsequent to the certification order. The PELRB stated as much in one of its prior decisions. *See State Employees Association of New Hampshire, Local 1984, on behalf of Ashland Town Employees v. Town of Ashland*, PELRB Decision No. 1999-120 (November 23, 2999).

As to the legal basis for the Union's motion, the PELRB's authority to issue a cease and desist order pending a hearing on an unfair labor practice charge is set forth by statute and administrative rule, relevant portions of which are as follows:

RSA 273-A:6 Violations.

I. The board shall have primary jurisdiction of all violations of RSA 273-A:5...

II. *The board may issue a cease and desist order if it deems one necessary in the public interest, pending the hearing.*

Pub 304.02 Interim Orders.

(a) When the board considers it to be in the public interest, it shall issue a cease and desist order under RSA 273-A:6, III pending a hearing under Pub 201.05.

(b) The board shall issue such an order for reasons to include, but not limited to:

- (1) Protection of the public safety;
- (2) To avoid prejudice to one party or another; or
- (3) To avoid irreparable harm.

Granting the Union's motion is in the public interest for a number of reasons. The 2005 amended certification remains in full force and effect at this time. It is a final order which has not been vacated or modified by any subsequent decision or order of the PELRB or any state court. None of the relevant authorities provide that final bargaining unit certification orders become invalid or may be invalidated by a public employer in the event the number of bargaining unit employees falls below 10 subsequent to the time when the PELRB certified the bargaining unit. The record reflects that the Union has a strong likelihood of success on the merits of its complaint. To deny the Union's motion for a cease and desist order would empower public employers to unilaterally suspend the collective bargaining process, disregard all their obligations as a public employer subject to a valid certification order, and ignore, impair, and otherwise eliminate all the rights conferred upon exclusive representatives and bargaining unit employees pending the hearing and decision in this case. Such a result is inconsistent with "the policy of the state to foster harmonious and cooperative relations between public employers and their employees and to protect the public by encouraging the orderly and uninterrupted operation of government." See Legislature's Statement of Policy, RSA 273-A. Moreover, it is obviously prejudicial to the Union and affected employees to allow the Town to continue with its unilateral suspension of RSA 273-A, thereby stripping the Union and employees of statutorily provided rights to engage in collective bargaining and the concomitant right to exclusive Union representation. We find it will be in the public interest to require a public employer like the Town in this case to continue to recognize and comply with the existing 2005 amended

certification pending a hearing and decision and to maintain the status quo as demanded by the Union.

Accordingly, the Union's motion for a cease and desist order is granted. The terms and conditions of employment established under the parties' most recent collective bargaining agreement shall remain in effect as per the status quo doctrine pending a hearing and decision on the Union's complaint. The Town does not have the right to unilaterally set the terms and conditions of employment, and it shall refrain from doing so. The Town shall otherwise comply with all its obligations under the 2005 amended certification and RSA 273-A pending a hearing and decision, including its obligation to participate in statutory mediation to address an impasse in bargaining.

So ordered.

July 27, 2012.



Charles S. Temple, Esq., Chair

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

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