

New England Police Benevolent Association, Local 250 v. State of New Hampshire, Department of Corrections, Decision No. 2011-114 (Case No. G-0109-3).

Background: The Union filed an unfair labor practice complaint claiming that since 2001 the DOC allowed employees completing physical fitness testing required by RSA 188-F:27 to do so during the course of their work shift or to receive compensatory time if the testing was done during employee's non-work time and that the DOC's current directive that physical fitness testing be accomplished on the employee's own time without work release or compensatory time was a unilateral and improper change of a binding past practice and constituted a violation of RSA 273-A:5, I (e) and (g). The DOC denied the charges claiming that, under the rules, employees were responsible for the cost of physical fitness testing and that, although some employees were compensated in the past, the DOC had never formally adopted a policy authorizing work release or compensatory time for physical fitness testing.

Decision: The PELRB found that there was a valid and binding past practice pursuant to which officers were entitled to complete the mandatory fitness test during their work shift or, if they completed the testing during personal time, they were entitled to receive compensatory time. The PELRB found that the DOC committed an unfair labor practice in violation of RSA 273-A:5, I (e) and (g) because it improperly and unilaterally changed a binding term and condition of employment thereby breaching its obligation to bargain in good faith and ordered the DOC to cease and desist from implementing any changes to this binding past practice except those changes that were obtained through the collective bargaining process.

Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.