



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NASHUA FIREFIGHTERS ASSOCIATION,
LOCAL 789, IAFF, AFL-CIO, CLC**

Petitioner

and

CITY OF NASHUA

Respondent

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CASE NO. F-0105-28

DECISION NO. 2000-065

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Nashua Firefighters Association, Local 789, IAFF, AFL-CIO, CLC (Complainant) filed unfair labor practice charges on May 23, 2000 pursuant RSA 273-A:5 I (a), (e), (g), (h), and (i) alleging that the City of Nashua (Respondent) and its agents breached the Collective Bargaining Agreement (CBA) by failing and refusing to bargain in good faith by making a unilateral change in working conditions by mandating an Association member be referred to an employee assistance program (EAP) which was not part of the disciplinary procedure previously agreed to by the parties and incorporated into their collective bargaining agreement (CBA).

The City of Nashua first answers that there is nothing in the existing CBA that limits the forms of disciplinary actions and that the CBA provides that discipline shall be corrective in nature. Further, the City asserts that mandatory assignment to an EAP has been a past practice.

The primary relief sought by the Complainant, following a hearing by the PELRB, is the issuance of a cease and desist order to stop the City from ordering any other individual to attend an EAP and to order the City to negotiate any alleged changes to the disciplinary procedure. The primary relief requested by the Respondent is that the PELRB order that the City has the right to make mandatory referrals to the EAP.

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esquire

For the Respondent: Dorothy Clarke, Esq., Assistant Corporation Counsel

ISSUES FOR DETERMINATION BY THE BOARD

1. Do the actions of the Respondent in making mandatory referrals to an Employee Assistance Program (EAP) constitute a unilateral action in breach of the contract or violate RSA 273-A:5 I (a), (e), (g), (h), or (i)?

WITNESSES

For the Complainant:

1. Lt. Donald Deslauriers
2. Captain Brian Morrisey
3. Chief Richard Navaroli
4. Richard Conway, Past President of Local 789

For the Respondent:

1. Chief Richard Navaroli
2. Assistant Chief Michael Buxton
3. Jane Joyce, Human Service Manager

Both 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 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.

EXHIBITS

For the Complainant:

1. Collective Bargaining Agreement
2. Employee Assistance program Handouts
3. Grievance file regarding the subject individual

4. City Personnel Policy
5. Rules & Regulations of the Nashua Fire Department
6. Personnel file of subject individual

For the Respondent:

1. Collective Bargaining Agreement
2. Multiple examples of previous EAP referrals (subject to reasonable privacy instructions)
3. EAP information
4. Nashua Fire Rescue Rules, Regulations, and Policies

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than fourteen (14) days prior to the scheduled date of hearing.

DECISION AND PRE-HEARING ORDER

The parties shall confer regarding outstanding discovery requests. The parties shall execute an agreement regarding the disclosure of information relating to members other than the subject individual. In the event that they are unable to do so, the City shall bring copies of such other relevant file information relating to other individuals to the hearing. The Board shall thereupon rule as to whether or not the identities of those other individuals are to be revealed to the Association.

The parties shall confer in a good faith effort to formulate an agreed statement of facts. Any such agreement reached shall be signed by the parties and an original and five (5) copies submitted to the Board no later than five (5) business days prior to the date of hearing.

The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than no later than five (5) business days prior to the date of hearing and submitting a hard copy of the same thereafter.

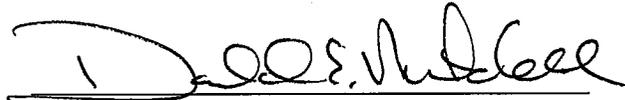
The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

Any preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled hearing date.

Unless otherwise ordered as a result of the filing of any subsequent motion, **an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, August 29, 2000 beginning at 9:30 AM.**

So ordered.

Signed this 10th day of July, 2000.

A handwritten signature in black ink, appearing to read "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearing Officer