



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Portsmouth Board of Police Commissioners		*
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Complainant		*
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V.		*
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International Brotherhood of Police Officers, Local 402		*
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Respondent	Case No. P-0709-21	*
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International Brotherhood of Police Officers, Local 402		*
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Complainant	Case No. P-0709-22	*
		*
V.	Decision No. 2000-122	*
		*
Portsmouth Board of Police Commissioners		*
		*
Respondent		*
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PRE-HEARING DECISION and ORDER

BACKGROUND

These two cases have been consolidated for hearing. In the first, Case No. P-0709-21, the Portsmouth Board of Police Commissioners (Commission) filed unfair labor practice charges on September 7, 2000 pursuant to RSA 273-A:5 I (d), (f) and (g) alleging that certain actions of the IBPO Local #402 (Union) constituted a breach of the parties collective bargaining agreement (CBA) and violated the statute. These actions were undertaken as the result of the parties' inability to successfully utilize the grievance procedure and culminated in the Union filing its demand for Arbitration with the

American Arbitration Association. The Commission requests relief in the form of a Board order finding the union to have committed an unfair labor practice and issuing a cease and desist order preventing arbitration. The Commission also seeks to have certain expenses reimbursed by the union.

The Union generally admits the material allegations related to the underlying incident. However, the Union interprets the Commission's actions in not hearing the grievance within certain dates as a denial violative of the parties' CBA grievance procedure entitling it to demand arbitration. The Union also claims that the Commission's decision not to hear the grievance within a particular time period and also by its alleged attempts at dictating the manner of proof by which the hearing would go forward, constitute unfair labor practices on its part in violation of RSA-A:5, I (a), (e), (g) and (h). The Union then proceeds to request relief in the form of a Board order finding the Commission to have committed unfair labor practices, ordering the Commission to cease and desist from violating the parties' grievance procedure and ordering certain reimbursement of expended monies by the Union.

In the second, Case No. P-0709-22, the International Brotherhood of Police Officers (Union) filed unfair labor practice charges on October 18, 2000 pursuant to RSA 273-A:5 I (a), (e), (g), (h), and (i) alleging that certain actions of Commission constituted a breach of the parties' collective bargaining agreement (CBA) and violations of the statute. The actions alleged to have been undertaken involve failure to follow grievance processing timelines (Count I, in essence a counter-complaint to the initial charges filed by the Commission and referred to above); failure to fairly bargain by directly dealing with a union member (Count II) and failure to implement an arbitrator's award pending Superior Court review pursuant to RSA 542(Count III). The Union requests relief in the form of a Board order finding the Commission to have committed unfair labor practices and requesting certain other restitution and reinstatement orders as well as reimbursement for costs and legal fees.

The Commission denies that it has acted in breach of the CBA and denies that it has violated RSA 273-A. The Commission requests the Board to dismiss the Union's complaint and further asks the Board to issue cease and desist orders against the Union to prevent it from violating grievance procedures and attempting to dictate procedural terms to the Commission during grievance hearings. The Commission also requests reimbursement of costs and legal fees.

PARTICIPATING REPRESENTATIVES

For the Complainant: Peter C. Phillips, Esq., Counsel to the IBPO Local 402

For the Respondent: Thomas J. Flygare, Esq.

WITNESSES

For the Complainant:

1. Officer John Cantola, Stewart, Local 402
2. Al Kane, President, Local 402
3. Rodney McQuate, Vice-President, Local 402

For the Respondent:

1. Bradley Russ, Chief of Police
2. Michael Magnant, Deputy Chief
3. William Mortimer, Chairman, Police Commission
4. Daniel Schwarz, Esq.*, Partner, Flygare, Schwarz & Closson,
5. Robert Sullivan, Esq., City Attorney

*Rebuttal witness

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 a 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

Joint Exhibits:

1. Memorandum, Officer Centola to Chairman Mortimer, dated 8/14/00
2. Notice of Demand for Arbitration, Attorney Phillips to American Arbitration Association, dated 8/25/00
3. Parties' Collective Bargaining Agreement, July 1, 1998 to June 30, 2003
4. Memorandum, Officer Centola to Dep. Chief Magnant, dated 7/7/00
5. Memorandum, Officer Centola to Local 402's Executive Board, 7/8/00
6. Memorandum, (with copy of Joint #5 attached) Officer Centola to Chief Russ, dated 7/9/00
7. Letter City Attorney Sullivan to Union Attorney Phillips, dated 7/12/00 (partial redaction)
8. Memorandum, Officer Centola to Chairman Mortimer, dated 7/21/00
9. Memorandum, Chief Russ to officer Centola, dated 8/1/00
10. Copy of Police Commission August 8, 2000 Meeting with posted legend dated 8/2/200

11. Memorandum Police Commission to Attorneys Phillips and Flygare, dated 8/8/00
12. Letter, Administrator Gonzalez (American Arbitration Assoc.) to Attorneys Phillips and Flygare, dated 9/14/00
13. Letter, Attorney Phillips to Administrator Gonzalez, dated 9/26/00
14. Arbitration Award, dated 8/18/00
15. Commission's Petition to Superior Court 9/13/00

Police Commission Exhibits

1. Commission minutes of August 8, 2000 meeting
2. Letter, Attorney Flygare to Administrator Gonzalez, dated 9/11/00
3. **Letter, Attorney Flygare to Administrator Gonzalez, dated 10/3/00
4. **Police Internal Report, authored by Captain Price, dated 5/12/00
5. **Memorandum, Chief Russ to Dep. Chief Magnant, dated 6/20/00
6. **Foster's Daily Democrat On-Line article, dated 8/22/00
7. Letter, Attorney Sullivan to Attorneys Flygare and Phillips, dated 8/3/00
8. ** Letter, Attorney Flygare to Attorney Phillips, dated 11/6/00
9. ** Letter, Attorney Phillips to Attorney Flygare, dated 11/13/00
10. ** Transcript of Richard Auclaire hearing, 1998

**Marked for Identification ONLY

Union Exhibits

1. Memorandum, Officer Centola to Chairman Mahoney, dated 5/12/98
2. Memorandum, Officer Centola to Chairman Mahoney, dated 8/18/98
3. Memorandum, Officer Centola to Chairman Mahoney, dated 12/3/98
4. **Transcript of Board of Police Commissioners hearing from 8/8/00
5. Grievance of Officer Russo, dated 7/9/00
6. Memorandum, Officer Centola to Chairman Mortimer, dated 7/21/00
7. **Portsmouth Herald article, dated 8/22/00
8. **Foster's Daily Democrat 8/22/00

**Marked for Identification ONLY

The parties have stipulated that those exhibits marked as "Joint Exhibits" are admissible in either of the matters consolidated for hearing. Both parties also 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 to be 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 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 ten (10) calendar days from the date of this order.

DECISION AND PRE-HEARING ORDER

1. This case has been consolidated with companion Case No. P-0709-22 for purposes of the evidentiary hearing. The parties have submitted a single Agreed Statement of Facts that shall be dispositive at hearing of the facts appearing therein.
2. 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 five (5) days prior to the scheduled evidentiary hearing.
3. 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.
4. Any additional 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 **December 21, 2000 beginning at 9:30 AM.**

Signed this 27th day of November, 2000.



Donald E. Mitchell, Esq.
Hearings Officer