



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Brookline

Petitioner

v.

Brookline Police Officers' Association

Respondent

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Case No. P-0769-1

Decision No. 2002-006

PRE-HEARING DECISION and ORDER

The Town of Brookline (hereinafter referred to as the "Town") filed a Modification Petition on December 12, 2001 seeking to modify the composition of a certified bargaining unit by removing the position of Police Sergeant on the basis of a "supervisory" exception. On December 26, 2001 the Brookline Police Officers' Association, (hereinafter referred to as the "Association") filed its Objection that asserts, in essence, that the Town's Modification Petition should be dismissed as barred by the prohibition contained in Pub 302.05(b)(2) barring modifications if there have been no changes in circumstances since an existing collective bargaining agreement was negotiated. Further, the Association objects to the Town's initiative before the PELRB while the Town has an appeal pending before the Supreme Court that involves a similar cause of action arising from the PELRB's original certification of the bargaining unit.

PARTICIPATING REPRESENTATIVES

For the Petitioner: James M. McNamee, Esquire

For the Respondent: James W. Donchess, Esquire

Also present: Robert Parodi, Esquire, Member of the Board of Selectmen

ISSUES FOR DETERMINATION

1. Whether or not the Town's Modification Petition should be dismissed by application of Pub 302.05(b)(2)?
2. Whether or not the position of Police Sergeant is a "supervisory" position subject to statutory exclusion from the existing bargaining unit?

STIPULATIONS

1. For purposes of the Respondent's Motion to Dismiss, the parties agree that there is no existing collective bargaining agreement.
2. For purposes of the hearing on the merits of the modification of the unit, the parties stipulate that there is an existing unit that has been certified by the PELRB and that all information regarding the circumstances preceding the certification of that unit is not relevant to the hearing on the merits of the modification.

WITNESSES

For the Petitioner:

1. Thomas Goulden, Police Chief
2. Harold Rogers, Member of the Board of Selectmen
3. Linda Saari, Member of the Board of Selectmen
4. Robert Parodi, Member of the Board of Selectmen
5. Angelo Corrado, Police Sergeant
6. Rena Dunkley, Administrative Assistant

For the Respondent:

1. Thomas Goulden, Police Chief
2. Angelo Corrado, Police Sergeant
3. A Police Officer, to be identified by counsel to opposing counsel

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 Petitioner:

1. Petition for Certification
2. Police Department job descriptions for Chief, Lieutenant, Sergeant, Corporal, and Police Officer
3. Town Personnel Plan and Policies
4. Minutes of Board of Selectmen's Meeting, dated September 8, 2001
5. New Hampshire Municipal Association report contents

For the Respondent:

1. Police Sergeant job description (additional)
2. No other exhibits intended

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 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 within fifteen (15) days of the date of this Order.

DECISION

1. The Hearing Officer has taken note of the pleadings as filed and has changed the caption of this matter to conform with them. Hereafter the status of Petitioner shall be assigned to the Town of Brookline and that of the Respondent to the Brookline Police Officers' Association.
2. The Respondent has expressed its intention to file a Motion to Dismiss the Town's Modification petition based upon operation of Administrative Rule Pub 302.05(b)(2). Said Motion shall be filed no later than February 15, 2002

at 4:00 P.M. and a copy delivered in like manner to opposing counsel by that same date and time. Thereafter, the Town shall file its anticipated Objection no later than March 8, 2002 and inform opposing counsel in like manner.

3. The Town has expressed the possibility that it would attempt to introduce contents of various personnel files of employees within the Police Department. In the event that it maintains that intention, counsel for the Town shall contact opposing counsel to discuss the specific planned exhibits and counsel shall confer and agree to the redaction of as much unnecessary identifying data as may be possible and still result in a material exhibit.
4. The party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to an evidentiary hearing. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than twenty (20) calendar days prior to the scheduled hearing date.
6. 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 Friday, March 15, 2002 beginning at 9:30 A.M.

Signed this 17th day of January, 2002.



Donald E. Mitchell, Esq.
Hearings Officer