

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

ROCHESTER POLICE COMMISSION

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS LOCAL 580
(ROCHESTER)

Respondent

CASE NO. P-0749-25

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS LOCAL 580
(ROCHESTER)

Petitioner

and

ROCHESTER POLICE COMMISSION

Respondent

CASE NO. P-0749-26

DECISION NO. 2002-029

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Rochester Police Commission, (the Complainant, hereinafter referred to as the "Commission") filed unfair labor practice charges on January 7, 2002 alleging that the IBPO Local 580 (the Respondent, hereinafter referred to as the "Union"), violated RSA 273-A:5 I (f) and the parties' collective bargaining agreement (CBA) by demanding that the Commission arbitrate the matter of the reassignment of two members of the bargaining unit as part of previous disciplinary action undertaken by the Commission that

was subjected by the parties to arbitration. That arbitration resulted in a determination by the arbitrator that the issue of the reassignment was "arbitrable" because the action taken by the Commission was done so in the context of a disciplinary investigation. The Commission asserts that only the PELRB can determine arbitrability and not the arbitrator as she has.

The Complainant requests relief in the form of a Board order finding that the Union violated the statute and that it cease and desist from further demands to arbitrate what it characterizes as "personnel decisions". It also seeks an award for any and all costs and attorney's fees necessarily spent because of the Union's actions in demanding arbitration of the reassignment issue.

The Union generally admits to certain relevant facts alleged by the Commission, but denies the material assertions of applicable law to the facts and actions of the parties in this case. The Union seeks to have the Commission's complaint denied and that an award issue in its favor requiring the Commission to reimburse the Union for any and all costs and attorney's fees necessarily spent because of the Union's actions in demanding arbitration of the reassignment issue.

Subsequent to the filing of the Police Commission's complaint, the Union filed an unfair labor practice complaint (Case No. P-0749-26) on February 8, 2002. In its complaint, the Union alleges that the Police Commission failed to follow the terms of an arbitrator's award that was issued August 11, 2001. Further, the Union alleges that the Police Commission has improperly sought appellate relief pursuant to RSA 542. The Union also alleges that the Police Commission's action in filing its own complaint against the Union because the Union has demanded arbitration of the merits of a remaining issue involving the reassignment of Officers Blair and Brown from the detective bureau is, in itself an unfair labor practice.

Following discussion between the parties' counsel and with the Hearing Officer, it was agreed that the two separate complaints may be consolidated for purposes of the PELRB's consideration. Further, the parties, through their counsel, agreed that both matters could be the subject of the instant Pre-Hearing Conference and both waived the conduct of a separate Pre-Hearing Conference on the latter Union Complaint (Case No. P-0749-26).

PARTICIPATING REPRESENTATIVES

For the Complainant: Thomas J. Flygare, Esq. for Daniel P. Schwartz, Esq.

For the Respondent: Peter C. Phillips, Esq., Counsel to the IBPO Local 580

ISSUE

1. Whether or not the removal of the officers from Detective Bureau is arbitrable?

WITNESSES

For the Complainant:

1. None named on Pre-Hearing Worksheet

For the Respondent:

1. Officer Timothy P. Brown
2. Officer Thomas V. Blair
3. Officer Scott Dumas, Local Vice President
4. Officer Harding, Union Local President

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

For the Complainant:

1. Collective Bargaining Agreement, 2000-2003
2. Grievance Documents

For the Respondent:

1. Collective Bargaining Agreement, 1999-2000
2. Collective Bargaining Agreement, 2000-2003
3. Grievance Documents
4. Arbitrators Award
5. Union Letter, dated 9/25/01
6. RSA 542 Petition of Police Commission
7. Union Answer to RSA 542 Petition

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 ten (10) days of the date of this Order.

DECISION AND PRE-HEARING ORDER


1. Upon agreement of counsel, both Case No. P-0749-25 and Case No. P-0749-26 are consolidated for all future PELRB proceedings.
2. The parties shall meet and confer within fourteen (14) days of the date of this order for the purpose of drafting an agreed statement of facts.
3. In the event that the parties agree to all relevant facts and so stipulate, then the parties shall both execute the "Stipulation of Facts" and the representative for the Commission shall file the document to the PELRB immediately.
4. Thereafter, the parties shall submit their respective supporting Memorandum of Law on the issue stated above no later than twenty-eight (28) days of the date of this order.
5. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination of the merits.
6. In the event that the parties cannot agree as to all relevant facts to be included in their stipulated statement, then they shall memorialize those facts upon which they can stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing scheduled below.
7. If there is to be an evidentiary 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 five (5) days prior to the date of hearing scheduled below.

8. 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.
9. Any additional preliminary, procedural or dispositive motions shall be filed by the parties within ten (10) days of the date of this order.
10. The Pre-Hearing Conference on Case No. P-0749-26 that was scheduled for March 8, 2002 is hereby cancelled.

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 Thursday, April 18, 2002 beginning at 9:30 AM.

So Ordered

Signed this 27th day of February, 2002



Donald E. Mitchell, Esq.
Hearings Officer