

**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Conway Police Department Employees  
By Local 3657 of AFSCME Council 93

Petitioner

v.

Conway Police Department

Respondent

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Case No. A-0511-12

Decision No. 2002-041

PRE-HEARING DECISION and ORDER

BACKGROUND

The Conway Police Department Employees, Local 3657 of AFSCME Council 93 (Complainant) filed unfair labor practice charges on February 25, 2002 pursuant to RSA 273-A:5 I (h) and (i) alleging that the Town of Conway Police Department (Respondent), acting through its Police Commission and its Chief of Police undertook actions related to the conduct and scheduling of a performance evaluation affecting the payment of wages that constituted a unilateral change in the parties' collective bargaining agreement (CBA) in violation of RSA 273-A:5 (h) and (i).

The Complainant requests relief in the form of a Board order finding that the Conway Police Commissioners and the Chief of Police committed an unfair labor practice, requesting that the Board issue a cease and desist order against the Commissioners and the Chief of Police and ordering them to make the subject police officer whole in wages and benefits and to reimburse the Union for any and all costs and expenses necessary to this complaint.

The Respondent admits that a change occurred relating to the scheduling and conduct of an employee evaluation of the subject police officer. However, it asserts that any question of its actions requires an interpretation of a provision in the parties' CBA and should have been properly pursued by the Union through the full grievance

procedure. It further asserts that any previous request for arbitration of this issue was time barred and that the Union's filing of this ULP complaint with the PELRB is also now time barred.

The Respondent requests relief in the form of a Board dismissal of the complaint as being time barred, pursuant to Pub 201.02 (a) and alternatively that the instant matter be deferred to arbitration. The Respondent also filed its formal Motion to Dismiss at the Pre-Hearing Conference. Said motion to be considered at the time of hearing.

PARTICIPATING REPRESENTATIVES

For the Complainant: Daniel A. Cocuzzo, AFSCME Council 93, Local 3657

For the Respondent: Warren D. Atlas, Esquire,

ISSUE FOR DETERMINATION BY THE BOARD

1. Does the PELRB have subject matter jurisdiction to hear the instant matter?
2. Is the Union time-barred from asserting its claim pursuant to RSA 273-A:6?
3. Did the actions of the Police Commissioners and the Chief of Police that resulted in the rescheduling of Police Officer Brittany Fisher's Employee Performance Evaluation constitute a unilateral action by the Respondent violative of the prohibitions against certain public employer conduct as contained in RSA 273-A:5 (h) or (i)?

WITNESSES

For the Complainant:

1. Brittany Fisher, Police Officer
2. George Walker, Corporal
3. Nathan Boothby, Sergeant
4. Thomas McKenzie, Sergeant
5. Edward Wagner, Detective

For the Respondent:

1. Robert J. Mullen, Chief of Police
2. Jeffery L Dicey, Police Lieutenant

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. Parties' Collective Bargaining Agreement, 1/1/2001 – 12/31/2001
2. Memorandum to Brittany Fisher, dated 8/23/01
3. Letter from Attorney Atlas to Steve Lyons, dated 1/22/02
4. Letter from Steve Lyons to Attorney Atlas, dated 2/4/02

##### For the Complainant:

1. None other than appear as Joint Exhibits

##### For the Respondent:

1. None other than appear as Joint Exhibits

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-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB at least fourteen (14) days prior to the scheduled hearing date.

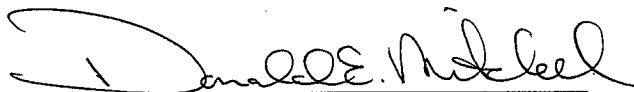
#### DECISION AND PRE-HEARING ORDER

1. The Respondent shall provide a copy of the "Personnel Manual" referenced by the Chief of Police to the Union within ten (10) days of the date of this order.
2. The Union may file its Objection to the Respondent's Motion to Dismiss on or before April 15, 2002.

3. The parties have agreed to meet and confer and shall do so at a mutually convenient time on or before April 16, 2002 for the purpose of executing a statement of mutually agreed facts upon which no additional evidence need be produced at the hearing. The agreed statement of facts shall be signed by each party representative and with five (5) copies shall be filed with the PELRB by the Union no later than April 19, 2002.
4. The Union shall prepare a chart or other graphic depiction of the items, *e.g.* hours, rate of pay, percentage increase, *etc.* as would facilitate the PELRB's consideration of the Union's claim for the subject police officer to be made whole in the event that the PELRB reaches the issue of damages. The Respondent shall cooperate with any reasonable requests for information made by the Union in its effort to have this data available at the hearing.
5. In the event this matter shall be settled by the parties prior to the scheduled hearing date, the Union, as the Complainant, shall immediately notify the PELRB and the parties shall file a jointly executed document confirming said settlement. Upon receipt of such a filing, The PELRB will administratively dismiss the case as either withdrawn or settled by agreement as may be appropriate.
6. Not later than five (5) days before the scheduled date of the hearing, as required by Rule Pub 203.01(b), the party representatives shall exchange their final Exhibit List and final Witness List indicating the purpose of each witness's testimony. At the same time, each shall deliver, mail, fax or e-mail a copy of their respective lists to the PELRB. 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.
7. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled date of the hearing as appears below.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties shall be conducted at the Office of the Public Employee Labor Relations Board on April 23, 2002 beginning at 9:30 AM.

Signed this 29<sup>th</sup> day of March, 2002.



Donald E. Mitchell, Esq.  
Hearings Officer