



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Officers Keely Grise and Thomas Bergeron and  
the Nashua Police Patrolmen's Association

Complainant

v.

City of Nashua Police Commission and  
City of Nashua

Respondent

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Case No. P-0740-13

Decision No. 2002-064

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

A Petition for Declaratory Judgment was filed by the Nashua Police Patrolman's Association ("Petitioners") with the PELRB on April 15, 2002 on behalf of two police officers. The Nashua Police Commission and the City of Nashua ("Commission") filed its answer on May 3, 2002. The Petitioners seek a determination as to whether either police officer must be terminated from employment upon the marriage of each to the other. The Petitioners allege that the Commission has expressed its intention to apply an anti-nepotism rule, so-called, to a planned marriage between the two police officers. The Petitioners further allege that the application of the Commission's nepotism policy would result in the termination of the prospective wife who is the more junior of the two police officers. The Petitioners say that the result is a disciplinary action that would call into play a provision of the parties' CBA that restricts terminations for "just cause". The Petitioners assert that a termination based upon application of the nepotism policy would constitute a termination without just cause in violation of the provisions of the parties' collective bargaining agreement. It seeks relief from the PELRB in the form of a declaration that the application of the existing nepotism rule to either police officer in this case would constitute a termination without "just cause".

The Commission answers the Petitioners' allegations by stating that its nepotism rule has been in effect for a long period of time that pre-dates the hiring of either police officer subject to this proceeding. It further answers that the nepotism rule advances a reasoned and rational policy affecting the safety of all police personnel and the efficient operation of the department. Also, the Commission denies that any termination would constitute a disciplinary action and would merely be the proper application of a management right to select and maintain employment standards. It additionally responds that the nepotism rule is applied to unmarried domestic partners as well as married personnel. For its part, the Commission seeks a finding by the PELRB that the application of nepotism rule does not violate any provision of the parties' collective bargaining agreement.

On the day of the Pre-Hearing Conference, the Commission filed a Motion to Dismiss the Petition for Declaratory Judgment because it does not meet the requirements of Administrative Rule Pub 206.01(a)(1) in failing to allege the "specific statute, rule or order whose applicability is in question..." As a further basis for dismissal the Commission points to the Petitioners' action on or about May 20, 2002 to file a Petition for Declaratory Ruling with the Human Rights Commission which creates a second forum for the Petitioners' request for declaratory relief. Further, the Commission relies on the doctrine of primary jurisdiction to assert that the PELRB defer any further action until the State Commission for Human Rights has made a final decision.

#### PARTICIPATING REPRESENTATIVES

For the Complainant: James W. Donchess, Esquire

For the Respondent: Stephen M. Bennett, Esquire, Deputy Corporate Counsel

#### ISSUE

1. Does the PELRB have jurisdiction to hear a declaratory judgment petition to determine whether the Nashua Police Commission's so-called "nepotism" rule violates the parties' existing collective bargaining provision regarding termination for just cause?
2. If the PELRB finds that it does have jurisdiction, should the PELRB defer consideration of this matter to the State Commission on Human Rights or delay its own proceedings until a final decision of that administrative agency?
3. If the PELRB has jurisdiction in this matter, would the application of the existing nepotism rule that would result in the termination of either of these two police officers upon their marriage violate the "just cause" provision of the parties' collective bargaining agreement?

WITNESSES

For the Petitioner:

1. Officer Keely Grise
2. Officer Thomas Bergeron
3. Officer Anthony Pivero
4. Other: Petitioners' counsel has provided oral notice of his intent to call additional witnesses in response to Respondents' representation of its own intent to call an additional witness for the purpose of establishing the efficacy of nepotism regulations within police departments.

For the Respondent:

1. Donald Gross, Police Chief
2. Maurice Arel, Commissioner
3. Other: Respondents' counsel has represented his intent to call an additional witness for the purpose of establishing the efficacy of nepotism regulations within police departments.

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. Collective Bargaining Agreement, effective 7/1/98-6/30/02
2. Nashua Police Department Rules & Regulations Reg. 3:5.12
3. Letter of Chief Gross, dated 3/18/02

For the Complainant:

1. None other than as listed as Joint Exhibits

For the Respondent:

1. Nashua Police Department Rules & Regulations Articles 3:1-14
2. Petitioners' Petition for Declaratory Ruling of the Human Rights Commission
3. Letter from Officer Grise and Officer Bergeron to Chief Gross of intent to marry
4. Relevant State and Federal case law

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

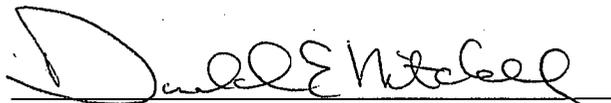
1. Attorney Donchess represents that the Petitioners are Officers Kelly Grise, Officer Thomas Bergeron and the Nashua Police Patrolman's Association and that he represents all Petitioners with their consent. Attorney Bennett represents that the Respondents are the Nashua Police Commission and the City of Nashua with their consent.
2. The parties shall meet and confer for the purpose of drafting an agreed statement of facts relevant to their jurisdictional arguments and, after both have executed such a "Stipulation of Facts", the Petitioners' counsel shall file it with the PELRB within twenty-one days of the date of this order.
3. The parties shall each file a legal memorandum of law with the PELRB, within twenty-one (21) days of the date of this order, addressing Issues #1 and #2 as stated above.
4. The Petitioners shall file their Objection to the Respondents' Motion to Dismiss also within twenty-one days of the date of this order.

5. The Respondents' counsel shall inform the Petitioners' counsel of the identity of the witness he described at the Pre-Hearing Conference who will testify to the purposes served by a nepotism regulation within fourteen (14) days of the date of this order. The Petitioners' counsel shall inform Respondents' counsel of the identity of his rebuttal witness seven (7) days thereafter.
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. 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 any evidentiary 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.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, June 20, 2002 beginning at 9:30 AM. In the event that the PELRB desires to hear oral arguments regarding the jurisdictional issues on a day separate than that on which the evidentiary hearing is scheduled, counsel will be informed by separate notice of any necessary rescheduling.

So Ordered

Signed this 24<sup>th</sup> day of May, 2002



Donald E. Mitchell, Esq.  
Hearings Officer