

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE TROOPERS
ASSOCIATION

Petitioner

v.

NEW HAMPSHIRE DEPARTMENT OF
SAFETY, DIVISION OF STATE POLICE

Respondent

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CASE NO. P-0754-10

DECISION NO. 2002-088

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The New Hampshire Troopers Association (Association) filed an unfair labor practice charge on June 26, 2002 pursuant to RSA 273-A:5, I (e), (h), and (i), alleging that the NH Department of Safety/Division of State Police (State) and its agents undertook a prohibited unilateral action and breached the Collective Bargaining Agreement (CBA) by not properly calculating the amount of pay due to a Major Crime Unit member who had been recalled to duty to investigate a crime. Specifically, the Union claims that there is a long-established past practice governing the calculation of the point in time at which duty time is initiated. The Union's position is that duty time begins to run when the Major Crime Unit member receives the call to report back to work. The Complainant requests that the PELRB find that the State has committed an unfair labor practice by its actions, order the State to pay to the specific member for an additional thirty (30) minutes of duty time, order the State to pay each similarly situated Major Crime Unit member who has been called back to return to duty since January 19, 2002 for time calculated from a start time of when each member received the call to report, and issue a cease and desist order covering future occurrences.

The State filed its answer with the PELRB on July 11, 2002. The essence of the State's response is that it denies that there is a past practice or course of dealing between the parties as represented by the Union. It denies that it undertook any unilateral action that is prohibited by either the statute or the parties' collective bargaining agreement. For its part, it maintains that the method of calculation of payment to Major Crime Unit members that it utilizes is proper and it asks the PELRB to dismiss the Union's complaint.

It should be noted that the parties' CBA provides for the PELRB to act as the adjudicator at Step IV of the grievance procedure contained within the CBA.

PARTICIPATING REPRESENTATIVES

For the Complainant: James W. Donchess, Esquire

For the Respondent: Thomas F. Manning, Director of Personnel

Sara J. Willingham, Manager of Employee Relations

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether Sgt. White's call back pay should have been calculated from the time he received his call to report back to duty at 6:00 AM on January 19, 2002?
2. Whether the State has an improperly adopted a unilateral rule or unilaterally established the method of establishing the start time or calculating the amount of hours worked by members of the Major Crime Unit who have been recalled to work?

WITNESSES

For the Complainant:

1. Trooper James White, Division of State Police and subject of grievance
2. Trooper Bruce Twyon, Division of State Police and Association President
3. Sgt. Susan Fosey, Division of State Police
4. Sgt. Richard Mitchell, Division of State Police
5. Sgt. Kelley McClare, Division of State Police
6. Trooper Lou Copponi, Division of State Police
7. Trooper William Magee, Division of State Police
8. Trooper Kathy Kimball, Division of State Police
9. Trooper Jill Rockey, Division of State Police
10. Nick Halles, formerly a major with the Division of State Police
11. Gus Kimball, formerly a sergeant with the Division of State Police
12. David Eastman, formerly a sergeant with the Division of State Police

For the Respondent:

1. Major Barry Hunter, Division of State Police
2. Major Fred Booth, Division of State Police
3. Captain Craig Wiggin, Division of State Police
4. Lt. Russell Conte, Division of State Police

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

Joint Exhibits:

1. Collective Bargaining Agreement, effective June 30, 2001

For the Complainant:

1. Radio Logs for selected dates
2. Weekly Duty Reports for selected dates

For the Respondent:

1. Selected provisions of the Standard Operating Procedure Manual

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

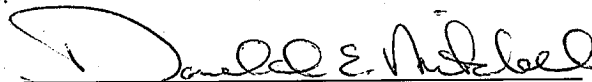
The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB within fourteen (14) days of the date of this order

DECISION AND PRE-HEARING ORDER

1. On or before September 10, 2002 the Complainant's counsel shall identify, by date, the specific radio logs and duty reports that he intends to offer as exhibits and provide said information to the State's representative. On or before September 10, 2002 the Respondent's representative shall identify, by section number and page number, those portions of the Standard Operating Procedure Manual that he intends to offer as an exhibit or as a series of exhibits and provide said information to the Complainant's counsel. Thereafter, the parties shall meet or otherwise confer in order to review the exhibits identified and to exchange copies of any outstanding documents which are not then in the possession of the other.
2. Complainant's counsel has listed twelve (12) witnesses that he contemplates utilizing in the presentation of the Complainant's case and has been advised of the possible application of administrative rule Pub 203.02 by the Board at hearing to deny any oral evidence that it deems "unduly repetitious". The parties shall also meet or otherwise confer for the purpose of discussing the nature of the testimony of the prospective witnesses each has listed with the goal of reducing the number of witnesses necessary to provide oral evidence at the hearing where the submission of affidavits, if approved by the opposing party, would be sufficient.
3. The party representatives shall thereafter forward any amendments to 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 the hearing date indicated below. The parties shall also 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.
4. Any additional preliminary, 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 Tuesday, September 24, 2002 beginning at 9:30 AM.

Signed this 31st day of July, 2002.



Donald E. Mitchell, Esq.
Hearing Officer