

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657,
Claremont Police Union

Complainant

v.

Claremont Police Department

Respondent

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Case No: P-0733-11

Decision No. 2004-023

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 3657/Claremont Police Union (hereinafter "the Union") filed an unfair labor practice complaint on January 9, 2004 alleging that the Claremont Police Department (hereinafter "the Department) committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (e), (g), (h) and (i) by refusing to discuss draft proposals of changes in policies and procedures with the Union, as well as by by-passing the Union as the exclusive representative and dealing directly with employees. The Union claims that during the course of a regular police commission meeting in October 2003, Police Chief Alexander W. Scott announced that he would no longer discuss draft proposals of changes in policies and procedures with Union representatives but would instead look for input directly from the membership. The Union views the Chief's action as contrary to an established practice of consultation with the Union prior to implementation. As remedies, the Union requests that the PELRB (1) find that the Department has committed improper practices, (2) order the Department to discuss proposed changes with the Union prior to implementation, (3) order the Department to publicly post its findings in the workplace for a period of thirty (30) days, and (4) order the Department to make the Union whole for any and all costs incurred in pursuing the instant matter.

The Department filed its answer denying the Union's charge on January 23, 2004. While generally admitting to the chronology of events that led to the filing of the Union's complaint, the Department states that no violation of RSA 273-A has occurred. It argues that the creation and/or adoption of the Department's operating procedures and policies are delegated to the exclusive authority of the police chief and police commission pursuant to RSA 105:2-a and the provisions of RSA 105-C:4. Moreover, it contends that such operating policies and procedures

are prohibited subjects of bargaining, again citing RSA 105:2-a and RSA 105-C:4 as authority, as well as the case of *Appeal of N.H. Troopers Assoc.*, 145 N.H. 288, 292 (2000). It reasonably follows, according to the Department, that if the creation and/or adoption of policies and procedures are not proper subjects of bargaining, then seeking input from rank and file cannot be considered an unlawful by-pass or direct dealing. It disputes the Union's claim of a past practice, stating that while the Police Chief has, on occasion, sought input from the Union, there have been many more instances in which no input was sought. Accordingly, the Department requests that the PELRB find that there has been no unfair labor practice committed by the Department and that it award the Department its costs associated with this matter.

A pre-hearing conference was conducted at the PELRB on February 18, 2004 during which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the Town: Matthew H. Upton, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

Whether the Department has committed unfair labor practices within the meaning of RSA 273-A:5 I (a) (b), (e), (g), (h) and/or (i) by:

- (1) Refusing to consult with the Union regarding proposed changes in policies and procedures and/or
- (2) Dealing directly with bargaining unit members?

WITNESSES

For the Union:

1. Bryan Lamirande, NH Staff Representative, AFSCME
2. Chris Kilmer, Chapter Chair, Claremont Police Union

For the Department:

1. Alex Scott, Chief of Police
2. Deputy Chief Wilmot
3. Chief Craig Ohlson
4. Paul Lazotte
5. Don Limonges
6. Michael Prozzo, Sheriff, Sullivan County

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 with 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, 4/1/01 – 3/31/04
2. Police Commission Minutes, October 2003
3. Lamirande Letter to Chief – dated 11/18/03
4. Upton letter to Lamirande – dated 11/20/03

For the Union:

None other than those marked as "Joint."

For the Department:

None other than those marked as "Joint."

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. During discussions between the parties' representatives and the hearing officer, it was expressed that there is no dispute between the parties as to the Department's statutory authority in determining departmental policies and procedures. The parties are therefore directed to continue to engage in good faith settlement efforts and, if successful, to notify the PELRB of such resolution as soon as possible. In addition, on or before **April 30, 2004**, the parties shall report to the hearing officer the progress of any settlement efforts.

2. The parties' representatives shall meet, or otherwise confer, on or before **April 15, 2004**, in order to compose a mutual statement of agreed facts. The parties'

representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.

3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. 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.

4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

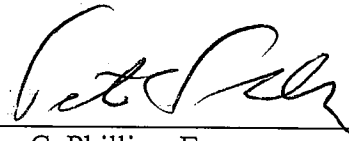
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

May 4, 2004 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 3rd day of March, 2004.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

Katherine M. McClure, Esq.

Matthew H. Upton, Esq.