



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

Nashua Police Patrolman's Association	*	
	*	
Complainant	*	
	*	Case No: P-0740-17
v.	*	
	*	Decision No. 2004-035
	*	
Nashua Police Commission	*	
	*	
Respondent	*	
	*	

---

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Nashua Police Patrolman's Association (hereinafter "the Association") filed an unfair labor practice complaint on February 13, 2004 alleging that the Nashua Police Commission (hereinafter "the Commission") committed an unfair labor practice when patrolmen assigned to traffic patrol were taken out of the shift bidding system which is otherwise required by the parties' collective bargaining agreement (CBA). More specifically, the Association avers that Article 35 of the CBA requires that all employees assigned to the Uniform Patrol Operations Bureau participate in a single shift bidding system. The Association states that officers who are assigned to the Traffic Enforcement Unit are not subject to the shift bidding system established under Article 35, despite the fact that they remain members of the Uniform Patrol Operations Bureau. In this manner, claims the Association, the Commission is reorganizing the department as a way to get around the CBA. The Association claims that the Commission's actions in this regard violate RSA 273-A:5 (e), (h) and (i). As remedies, the Association requests that the PELRB (1) declare that the Commission has committed an unfair labor practice and violated the parties' CBA by removing patrolmen assigned to traffic control from the shift bidding system, (2) order that they be returned to the shift bidding system in accordance with Article 35, and (3) order any other remedy as may be just.

The Commission filed its answer denying the Association's complaint on March 1, 2004. While the Commission admits that it removed certain patrolmen assigned to the Uniform Field Operations Bureau out of the shift bidding system, it denies that it violated the parties' CBA or RSA 273-A when it did so. The Commission maintains that Article 35, by its express terms, does not limit the discretion and authority of the Chief of Police to assign or reassign any employee according to the needs of the department. By way of further answer, the Commission

states that currently there are three (3) patrol officers who were taken out of the Uniform Field Operations Bureau and placed in the Traffic Enforcement Unit. This unit, as described by the Commission, was formed in order to address specific needs of the community and the department – as determined by management personnel of the police department. The unit works a four (4) day on – two (2) day off schedule and may work first, second or split shifts depending on need. The Commission notes that the unit was created two (2) years ago and the Association has never filed any complaint regarding the formation of the unit until now. The Commission requests that the PELRB dismiss the Association's improper practice charge and order such other relief as may be fair and just.

The instant dispute is presented to the PELRB in accordance with the parties' contractual grievance procedure. *Appeal of Nashua Police Commission*, 149 N.H. 688 (2003). During the course of the pre-hearing conference, held on April 5, 2004 at PELRB offices, counsel for the parties stipulated to the PELRB's jurisdiction.

#### PARTICIPATING REPRESENTATIVES

For the Association: James W. Donchess, Esq.

For the Commission: Stephen M. Bennett, Esq.

#### ISSUE FOR DETERMINATION BY THE BOARD

Whether or not the Commission violated RSA 273-A:5 (e), (h) and/or (i) by removing Traffic Enforcement Unit officers from the shift bidding system established under Article 35 of the parties' CBA.

#### WITNESSES

For the Association:

1. Officer John Newell, President, Nashua Police Patrolman's Assoc.
2. Officer John Yurchak
3. Sergeant John Fisher
4. Officer Jim Kennedy
5. Officer Phil Costa

For the Commission:

1. Chief Donald Gross
2. Chief Timothy Heffernan
3. Deputy Chief Donald Conley
4. Captain Douglas Hayes
5. Officer Vincent Curtis

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, July 1, 2002 to June 30, 2005.

For the Association:

1. Previous Collective Bargaining Agreements
2. Bargaining Notes

For the Commission:

1. SOP's related to Traffic Enforcement Unit and Problem Oriented Policing Unit
2. Bargaining Notes
3. Oversight Committee Records/Notes

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 (1) 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. The parties stipulate to the PELRB's jurisdiction in this matter.
2. The parties' representatives shall meet, or otherwise confer, on or before **June 1, 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 said 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:

**June 15, 2004 at 9:30 AM**

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

So ordered.

Signed this 5<sup>th</sup> day of April, 2003.



---

Peter C. Phillips, Esq.  
Hearings Officer

Distribution:

James W. Donchess, Esq.

Stephen M. Bennett, Esq.