



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Lebanon Professional Administrative &
Salaried Employees

Complainant

v.

City of Lebanon

Respondent

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Case No: M-0730-1

Decision No. 2004-162

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Lebanon Professional Administrative & Salaried Employees (hereinafter "the Union") filed an unfair labor practice complaint on September 2, 2004 alleging that the City of Lebanon (hereinafter "the City") committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (e), (g), (h) and (i), by the eliminating a Police Captain's position and creating a Deputy Police Chief position. The Union states that the newly created position of Deputy Police Chief is substantially similar to the bargaining unit position of Police Captain in salary, benefits and job duties, and that, prior to the change, the Police Captain performed the duties described in the Deputy Police Chief job description. The Union claims that the creation of the Deputy Police Chief position is merely a subterfuge to remove a position from the bargaining unit. The Union avers that the City's actions not only constitute an unlawful interference with rights conferred under RSA 273-A, but also a failure to engage in impact bargaining over the personnel action. As remedies, the Union requests that the PELRB (1) find that the City has violated RSA 273-A:5 I (a), (b), (e), (g), (h) and (i) and is therefore guilty of an unfair labor practice; (2) order the City return the Police Captain position to the bargaining unit; (3) order the City to publicly post the Board findings for thirty (30) days; (4) order the City to make the Union whole for any and all costs incurred in this matter; and (5) order any and all other relief that the Board deems necessary and appropriate.

The City filed its answer denying the Union's charge on September 15, 2004. While the City admits that on or about April 15, 2004 it reorganized the command staff

of its police department and created the Deputy Chief Position, it asserts that the creation of a new rank is an exercise of managerial prerogative within the meaning of RSA 273-A:1, XI. In this regard, it contends that the creation of a new rank and the determination of its' job duties and responsibilities is not a mandatory subject of bargaining. The City goes on to state that the creation of a new rank outside the bargaining unit does not have any impact on the bargaining unit that would require impact bargaining, and that the City's decision to reduce the number of individuals hold the rank of Police Captain is itself a managerial prerogative under RSA 273-A:1, XI. Accordingly, the City requests that the PELRB (1) dismiss the Union's improper practice charge; (2) award costs to the City, including reasonable attorney's fees; and (3) award such other relief to the City as justice may require.

A pre-hearing conference was conducted on October 1, 2004 before the undersigned Hearing Officer. Both parties were represented by counsel. At the outset of the conference, the Hearing Officer disclosed to the parties that generally from 1994 to 2002 he had previously represented the Lebanon Police Benevolent Association as counsel. He stated to the parties that he believed that he could conduct the instant proceeding in a fair and impartial manner. The parties' counsel indicated that they had no objection to the Hearing Officer conducting the instant pre-hearing conference.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the Town: Mark T. Broth, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Did the City of Lebanon commit an unfair labor practice in violation of RSA 273-A:5 (a), (b), (e), (g), (h) and/or (i) relative to its creation of a Deputy Police Chief's position and alleged elimination of a Captain's position?
- (2) If so, what shall be the remedy?

WITNESSES

For the Union:

1. George Sykes, President LPASE

For the Town:

1. Mitzi Baron
2. Randall L. Chapman

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. April 15, 2004 Memo from Chief Chapman to Acting City Manager Kenison
2. Deputy Chief Job Description
3. Captain Job Description
4. Correspondence between City and Union

For the Union:

None other than those marked as joint.

For the Town:

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 (½) 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' representatives shall meet, or otherwise confer, in attempt to reach a stipulation on consolidating the instant matter with PELRB Case No. M-0730-2. On or before **October 8, 2004**, counsel shall notify the Board, by joint motion or their own motion, in the event they seek to have cases M-0730-1 and M-0730-2 consolidated, or, in the alternative, the instant matter held in abeyance pending the Board's consideration of PELRB Case No. M-0730-2.

2. The parties' representatives shall meet, or otherwise confer, on or before in **October 27, 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 opposing 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:

November 16, 2004 @ 9:30 AM

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

So ordered.

Signed this 1st day of October, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Katherine M. McClure, Esq.

Mark T. Broth, Esq.