



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Lebanon Professional Administrative & Salaried
Employees

Petitioner

v.

City of Lebanon

Respondent

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Case No: M-0730-2

Decision No. 2004-175

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Lebanon Professional Administrative & Salaried Employees (hereinafter "the Union") filed a modification petition with the Public Employee Labor Relations Board (PELRB) on September 2, 2004 seeking to have the certified bargaining unit position amended to include the position of Deputy Police Chief. The Union alleges in its' petition that the duties and responsibilities of the newly created position require that it be placed within the certified unit. The City of Lebanon (hereinafter "the City") filed its exceptions to the Union's petition on September 15, 2004. While the City acknowledges that as part of a reorganization of the command structure of its police department it created a new position of Deputy Police Chief, it requests that the Union's petition be denied. The City claims that based upon the position's supervisory and confidential nature, as a matter of law it is not appropriate for the Deputy Police Chief to be included within the certified unit.

In conjunction with PELRB Case No. M-0730-1, a pre-hearing conference was conducted on October 1, 2004 before the undersigned Hearing Officer. Both parties were present and 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. 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 McClure, Esq.

For the City: Mark T. Broth, Esq.

ISSUES PRESENTED FOR REVIEW

1. Whether or not the certified unit should be modified to include the position of Deputy Police Chief.
2. Whether or not the position of Deputy Police Chief, in accordance with RSA 273-A:8, is precluded from inclusion within the certified unit because of its supervisory status.
3. Whether or not the position of Deputy Police Chief is a confidential employee within the meaning of RSA 273-A:1 IX (c) and therefore precluded from inclusion within the certified unit.

WITNESSES

For the Union:

1. George Sykes, President LPASE

For the City:

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 City:

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.

DECISION


1. In reference to PELRB Decision No. 2004-162 (see Decision Section, ¶ 1), and there having been no agreement reached by the parties' relative to consolidation of the instant matter with PELRB Case No. M-0730-1, the instant matter shall proceed to hearing.
2. 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.
3. 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 15, 2004 @ 9:30 AM

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

So ordered.

Signed this 3rd day of November, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Katherine McClure, Esq.

Mark T. Broth, Esq.