



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hampton Police Association	*	
	*	
Complainant	*	Case No: P-0719-20
v.	*	
	*	Decision No. 2006-004
Town of Hampton	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Hampton Police Association (hereinafter "the Association") filed an unfair labor practice complaint on September 20, 2005 alleging that the Town of Hampton (hereinafter "the Town") committed an unfair labor practice when it established a nepotism policy. More specifically, the Association states that the Town has had a long standing tradition of hiring police officers and other uniformed employees within the police department, both full and part-time, who are related (i.e., father and daughter, father and son-in-law, brothers, cousins, etc.), and that there are a number of both full and part-time officers, currently employed, who are related. The Association also asserts that the police department has established a universally followed past practice of only hiring its full-time police officers from the ranks of its part-time officers. However, the Association alleges that the Town Manager, James Barrington, recently promulgated to all Town employees (both organized and unorganized) the Town's intention to implement a nepotism policy that would prohibit relatives of current employees from being hired by the Town in any capacity. The Association states that Mr. Barrington indicated that the nepotism policy would remain proposed and not implemented (at least as to the Association's members), and that this understanding was solidified and reaffirmed by various oral and written statements. However, according to the Association, while meeting with the Town on another matter on September 12, 2005, it learned from Mr. Barrington that he had unilaterally and without notice, implemented the policy and applied it to all members of the Association's two (2) bargaining units. As a result, the Association claims, *inter alia*, that the Town has violated RSA 273-A:5 I (a), (b), (c), (e), (g), and (h). As a remedy, the Association requests that the PELRB order the Town to rescind the nepotism policy as being applicable to the employees represented by the Association.

The Town filed its answer denying the Association's charge on October 5, 2005. The Town states that it has not made a unilateral material change in the wages, hours and working conditions of individuals represented by the Association in connection with the implementation of the nepotism policy. By way of further answer, the Town indicates that it in fact adopted a nepotism policy that became part of its personnel manual on or about January 1, 2004. However, it also states that the Town Manager and the Association agreed that such policy would not apply to existing police department employees, but only to new hires. It was on September 12, 2005, according to the Town, that the Town Manager reminded Association counsel that the nepotism policy had been implemented on January 1, 2004 and that it applied to all new hires. In this regard, the Town argues that the Association's complaint is time barred pursuant to RSA 273-A:6, VII and must be summarily dismissed. Otherwise, the Town maintains, among other things, that the subject policy does not conflict with the existing collective bargaining agreements ("CBA's") and that the right of management to select personnel utilizing the criteria that it chooses is contained therein. The Town adds that the Association's complaint is completely without merit and is but the latest in a long string of baseless, harassing and time consuming pleadings filed with this Board. Accordingly, the Town requests that the PELRB (1) dismiss the Association's complaint; (2) deny the relief sought by the Association; (3) award the Town its attorney's fees; and (4) grant such other relief to the Town as deemed just and appropriate under the circumstances.

A pre-hearing conference was conducted by the undersigned-hearing officer at PELRB offices, Concord, New Hampshire on January 9, 2006.

PARTICIPATING REPRESENTATIVES

For the Association: J. Joseph McKittrick, Esq.

For the Town: Elizabeth A. Bailey, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Does the Association's complaint violate the six-month statute of limitations set forth in RSA 273-A:6, VII?
- (2) If not, did the Town commit an unfair labor practice by its adoption of the nepotism policy?
- (3) If so, what shall be the remedy?

WITNESSES

For the Association:

1. James Barrington
2. Steve Henderson
3. Joseph Galvin

4. John Joyce

For the Town:

1. James Barrington

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. Town's Personnel Policy 1/1/04.
2. Parties' CBA dated 4/1/03.
3. Parties' CBA (Sergeants) dated 4/1/03.
4. Letter to Employees dated 12/26/03.

For the Association:

1. Letter dated 5/3/04 from Association to Town.
2. Letter dated 5/5/04 from Town to Association.
3. Letter dated 4/29/05 from Association to Town.
4. Letter dated 5/11/04 from Town to Association.

For the Town:

None at this time other than those marked as "Joint," above.

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 being set aside for this hearing is 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. The Town shall file its Motion to Dismiss regarding the statute of limitations claim no later than **January 19, 2006**. The Association shall file its response, if any, to the Town's motion no later than **February 6, 2006**.
2. The parties' representatives shall meet, or otherwise confer, on or before **February 1, 2006** 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, a long with any corresponding exhibits, with the PELRB no later than **February 6, 2006**.
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 **January 19, 2006**.
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:

February 15, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 10th day of January, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

J. Joseph McKittrick, Esq.

Elizabeth A. Bailey, Esq.