



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Brotherhood of Police Officers,
Local 402

Complainant

v.

Portsmouth Police Commission

Respondent

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Case No: P-0709-24

Decision No. 2006-014

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The International Brotherhood of Police Officers (IBPO) Local 402, (hereinafter the "Union") filed an unfair labor practice complaint on November 4, 2005 alleging that the Portsmouth Police Commission (hereinafter the "Commission") committed an unfair labor practice by certain conduct towards Officer Richard Webb, Jr. More specifically, the Union claims that the Commission violated RSA 273-A:5 I (a), (b), (c), (d), (g), and (h) by subjecting Officer Webb to questioning relative to a previous interview in which he was present in his capacity as a union steward. The Union states that on July 7, 2005 Officer Webb, as a union steward, accompanied another officer to a meeting with Deputy Police Chief David Young regarding a disciplinary matter. According to the Union, Officer Webb thereafter received an e-mail from Captain Len DiSesa on August 8, 2005, notifying him that his presence was required for an interview as a witness regarding the internal investigation of July 7, 2005. The Union indicates that on August 24, 2005 Officer Webb met with Captain DiSesa and Captain John Yerardi for the interview regarding that meeting, and that Officer Richard Brabazon, President of the Union, was also present. As described by the Union, Officer Brabazon objected to the interview before questioning began based on the fact that Officer Webb was acting in his capacity as a Union representative during the July 7, 2006 meeting. The objection was noted by Captain DiSesa but, as alleged by the Union, Officer Webb was ordered to answer the questions under a threat of disciplinary action being taken against him if he failed to do so. Based upon the foregoing, the Union requests that the PELRB (1) issue a cease and desist order against the Commission pursuant to RSA 273-A:6 III, (2) order the Commission to cease and desist in its violation of employees' rights under RSA 273-A, and (3) order any other remedy deemed just and appropriate under the circumstances.

The Commission filed its' response to the Union's unfair labor practice charge on November 18, 2005. Although it admits to the factual allegations set forth in paragraphs 1-11 of Attachment A to the Union's complaint, it denies that it has committed any violation of the law. By way of further answer, the Commission avers, among other things, that the Union has failed to allege any facts to suggest that the Commission has in any way "retaliated" or "discriminated" against Officer Webb, has failed to allege any specific interference by the Commission with Officer Webb's "protected union activity," has failed to characterize "each particular act in terms of the specific provision(s) of RSA 273-A:5 or RSA 273-A:6 alleged to have been violated" in accordance with Board rules, and otherwise failed to pursue this matter through binding arbitration as required under New Hampshire law. In furtherance of its' assertions in this regard, the Commission filed a Motion to Dismiss Improper Labor Practices. The Commission requests that the PELRB (a) dismiss the Union's charge with prejudice, (b) order the Union to reimburse the City for its' fees, expenses and lost time in responding to the charge and (c) grant such other relief as may be appropriate under the circumstances.

A pre-hearing conference was conducted via telephone on January 23, 2006 by the undersigned hearing officer.

PARTICIPATING REPRESENTATIVES

For the Union: Diane S. Byrnes, Esq.

For the Commission: Thomas J. Flygare, Esq.

ISSUES FOR BOARD REVIEW

- (1) Is PELRB jurisdiction appropriate under the circumstances or should the matter have been pursued through binding arbitration per *Appeal of Hooksett School District*; *Appeal of Campton School District*, and their progeny?
- (2) Has the complainant satisfied the filing requirements set forth in RSA 273-A and/or Pub 201.02, et seq.?
- (3) Has the City committed an improper labor practice, within the meaning of RSA 273-A:5 I (a), (b), (c), (d), (g), and/or (h), by subjecting Officer Richard Webb to questioning relative to a previous interview in which he was present in his capacity as a union steward?

WITNESSES

For the Union:

1. Officer Richard F. Webb
2. Officer Richard Brabazon

For the Commission:

1. Captain Len DiSesa
2. Deputy Chief David Young
3. Chief of Police Michael Magnant

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. Collective Bargaining Agreement
2. E-mail from Captain Len DiSesa to Officer Richard Webb dated 8/8/05

For the Union:

None other than those marked above as "joint."

For the Commission:

None other than those marked above 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

Pursuant to the DECISION SECTION below, no hearing is presently scheduled in this matter.

DECISION

1. Based upon discussions between the hearing officer and the parties' counsel during the pre-hearing conference, it was determined that an evidentiary hearing was unnecessary at this time and that the parties would submit the instant matter, as to its merits, through a joint statement of agreed facts and cross-motions for summary

judgment. Accordingly, the Adjudicative Hearing scheduled for February 9, 2006 is hereby cancelled.

2. The parties are in agreement as to the facts alleged in Paragraphs 1-11 of the attachment to the Union's complaint. As to a remaining fact relating to the outcome or results of Officer Webb's interview, or any other proposed stipulations, the parties' counsel are directed to confer on or before **January 30, 2006** in order to finalize their mutual statement of agreed facts, and upon reaching such agreement, notify the undersigned hearing officer.
3. The Union shall file its' response to the Commission's Motion to Dismiss, dated January 23, 2006, on or before **February 7, 2006** with the PELRB.
4. The parties' counsel shall jointly execute the parties' Statement of Agreed Facts, as referenced in paragraph 2, above, and file that document, a long with their respective summary judgment motions, and supporting memorandums of law, with the PELRB on or before **March 10, 2006**.
5. The parties' CBA may be considered part of the record at this time. Any other exhibits must be appropriately referenced within the Statement of Agreed Facts and attached thereto.
6. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is ascertained that a hearing is necessary prior to a final determination.
7. In the event that it is later decided that an evidentiary hearing is necessary, the parties' counsel 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.

It is so ordered.

Signed this 25th day of January, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Diane S. Byrnes, Esq.
Thomas J. Flygare, Esq.