



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Portsmouth NH Police Patrolmen's Union,
NEPBA Local 11

Complainant

v.

Portsmouth Police Commission

Respondent

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Case No: P-0709-28

Decision No. 2007-070

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Portsmouth NH Police Patrolmen's Union, NEPBA Local 11 (the "Union") filed an unfair labor practice complaint against the Portsmouth Police Commission (the "City") on March 30, 2007. The Union claims the City improperly required Officer Webb to remove a NEPBA pin from his uniform. The Union contends the display of the pin was proper and its removal was not justified or required and that the City has committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c) and (g) and has violated Officer Webb's rights of free speech under the United States and New Hampshire constitutions.

As remedies, the Union requests that the PELRB: 1) Immediately issue a cease and desist order against the Respondent prohibiting the Respondent from ordering any patrol officer to remove his/her Union pin; 2) Order payment of costs, including attorney fees incurred by the Union; and 3) order any other relief the Board deems adequate and necessary.

On April 13, 2007, the City filed its answer denying the Union's charge. The City states that Officer Webb was required to remove his NEPBA pin consistent with Department Standard Operating Procedures. On May 1, 2007 the City filed a motion to dismiss. The City requests dismissal because: 1) the complaint is barred by the 6 month limitation period set forth in RSA 273-A:6, VII; 2) the complaint lacks the specificity required by Pub 201.02 (b)(4) and (b)(6); and 3) the parties' collective bargaining agreement covers this dispute and provides for final and binding arbitration.

The City requests that the PELRB: 1) Dismiss the charge with prejudice; (2) order NEPBA Local 11 to reimburse the City for its fees, expenses, and lost time in responding to the Charge; and 3) Grant such other relief as may be appropriate under the circumstances.

The undersigned Hearing Officer conducted a pre-hearing conference on May 9, 2007 at the PELRB offices in Concord, New Hampshire. The pre-hearing conference was originally scheduled for May 3, 2007 but was rescheduled in accordance with the City's assented to motion to reschedule.

PARTICIPATING REPRESENTATIVES

For the Union: Peter J. Perroni, Esq.

For the City: Thomas J. Flygare, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

At the pre-hearing conference the City withdrew its complaints concerning the specificity of the charge. The parties also discussed the remaining issues raised by the pleadings filed to date, the applicable Standard Operating Procedure (SOP), and areas of material factual dispute. Based on these discussions and the pleadings, the issues are:

- 1) Whether the complaint should be dismissed for any of the reasons stated in the City's motion to dismiss; and
- 2) Whether the City properly required Officer Webb to remove the NEPBA pin from his uniform and, if not, whether the City violated RSA 273-A:5 I (a), (b), (c) or (g).

WITNESSES

For the Union:

1. Chief Michael Magnant
2. Captain David Ferland
3. Officer Richard Brabazon, Union President
4. Officer Richard Webb

For the City:

1. Chief Michael Magnant
2. Deputy Chief Len DiSesa
3. Captain John Yerardi

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

For the Union:

1. Rules & Regulations of the Portsmouth Police Department
2. Standard Operating Procedures of the Portsmouth Police Department
3. NEPBA Union Pin
4. Other pins worn by officers of the Portsmouth Police Department

For the City:

1. Standard Operating Procedure P-102
2. Department Rules Section 32
3. Email dated 5/3/06

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 three hours. 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, on or before May 25, 2007 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 two days prior to the date of the 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. The parties shall file any additional preliminary, procedural or dispositive motions no later than ten calendar days prior to the scheduled hearing date and any responses thereto shall be filed no later than seven calendar days prior to the scheduled hearing date.

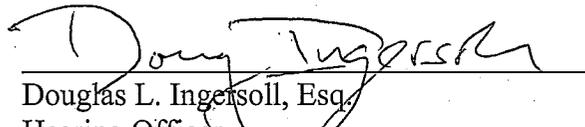
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

May 31st, 2007 @ 9:00 a.m.

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

So ordered.

May 10, 2007.


Douglas L. Ingelsoll, Esq.
Hearing Officer

Distribution:
Peter J. Perroni, Esq.
Thomas J. Flygare, Esq.