



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Exeter Police Association	*	
	*	
	*	
Complainant	*	Case No. P-0753-15
v.	*	
	*	Decision No. 2007-151
Town of Exeter	*	
Respondent	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On September 25, 2007 the Exeter Police Association (“Association”) filed a complaint alleging that the Town of Exeter (“Town”) violated RSA 273-A:5, I (a), (c), (d), (e), (g), (h), and (i). According to the Association, the officers’ normal work schedule is four 8 hour days on followed by two days off, resulting in periodic 32 hour work weeks instead of 40 hour work weeks. The Association contends the Town improperly and unilaterally changed existing and established practice by refusing to pay overtime compensation to an officer during a 32 hour workweek until the officer has worked a minimum of 40 hours and by changing the established “shift swapping” practice.

As remedies, the Association requests that the PELRB: 1) issue an immediate cease and desist order pursuant to RSA 273-A:6, III; 2) order the Town to repay all lost monies and incidental and consequential damages; and 3) order the Town to pay the Association’s attorney fees. On September 27, 2007 the PELRB denied the Association’s request for a cease and desist order. *See* PELRB Decision No. 2007-138.

The Town filed its answer denying the charges on October 8, 2007. The Town contends that the Association unilaterally withdrew from the existing arrangements by filing a complaint with the New Hampshire Department of Labor’s Wage and Hour Division and obtaining a mandate that in effect required the Town to make the disputed changes. The Town also cites to a related Superior Court lawsuit filed by the Association on September 10, 2007, grievances filed by the Association, the Association’s alleged failure to bargain, the Association’s alleged failure to utilize the grievance procedure with respect to the current dispute, and the inadequacy of the Association’s pleadings.

Accordingly, the Town requests that the PELRB: 1) dismiss the complaint with prejudice; 2) order the Association to reimburse the Town for its expenses and fees; and 3) order such further relief as may be just and fair under the circumstances.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on October 22, 2007.

PARTICIPATING REPRESENTATIVES

For the Association: J. Joseph McKittrick, Esq.

For the Town: Daniel P. Schwarz, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the Town's changes to existing procedures for payment of overtime and shift swapping constituted an improper unilateral change to the terms and conditions of the officers' employment in violation of RSA 273-A:5, I (a), (c), (d), (e), (g), (h), and (i)?
- (2) Whether the Town's actions were justified or required as a result of the Department of Labor and/or Superior Court proceedings?
- (3) Whether the Association's complaint is barred or fails because of pending grievances and/or its failure to pursue a grievance concerning the subject matter of the complaint?

WITNESSES

For the Association:

1. Patrick Mulhollnad, Association President
2. Richard Kane, Chief of Police
3. Russell Dean, Town Manager

For the District:

1. Richard Kane, Chief of Police
2. Cynthia Flynn, Department of Labor
3. Thomas Flygare, Esq.,

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.

EXHIBITS

For the Association:

1. Current CBA
2. DOL Complaint
3. Correspondence between the Association and the Town
4. All documents listed by the Town

For the District:

1. Grievances on same issue
2. Documents on Department of Labor investigation
3. Lawsuit in Superior Court on same issue.

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 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 3 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 20 days prior to the date of the evidentiary hearing.

DECISION

1. On or before November 15, 2007, the parties shall file documentation concerning the Department of Labor proceeding and the Superior Court proceeding, including complaints, petitions, answers, orders, and decisions. The parties shall also file briefs on or before November 15, 2007 addressing the relevance of the Department of Labor and Superior Court proceedings to the current unfair labor practice complaint. The party's briefs shall also address the relevance, if any, of the Fair Labor Standards Act to this case as cited by counsel at the pre-hearing conference. The parties' briefs shall also address why the currently scheduled hearing of November 27, 2007 should be delayed or postponed, if at all, pending consideration of the parties' submissions under this paragraph.
2. The parties' representatives shall meet, or otherwise confer, on or before November 15, 2007, to attempt to stipulate to the submission of this case in

writing or, in the alternative, without the need for formal testimony. The parties shall file forthwith a joint statement setting forth any such agreement and include a proposed schedule for the parties' filings.

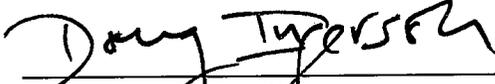
3. If the matter is to proceed to a hearing, counsel shall meet, or otherwise confer, on or before November 15, 2007 in order to agree on joint exhibits and to compose a mutual statement of agreed facts. The parties shall file all joint exhibits, factual stipulations, and other exhibits properly marked for identification on or before November 23, 2007. If these materials are submitted electronically the parties do not have to otherwise file the original and five copies.
4. Counsel shall file any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, at least 5 days prior to the scheduled hearing date.
5. The parties shall file any additional preliminary, procedural or dispositive motions no later than November 15, 2007, and any responses or objections thereto shall be filed on or before November 23, 2007.
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 27, 2007 @ 10:00 a.m.

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

So ordered.

October 22, 2007.



Douglas L. Ingersoll
Staff Counsel/Hearing Officer

Distribution:

J. Joseph McKittrick, Esq.

Daniel P. Schwarz, Esq.

Thomas J. Flygare, Esq.