



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AFSCME Local 3657/Hudson Police	*	
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	*	
Complainant	*	Case No. P-0781-1
v.	*	
	*	Decision No. 2007-169
Town of Hudson	*	
Respondent	*	
	*	

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PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On November 1, 2007, AFSCME Local 3657, Chapter 006, Hudson Police Department Employees ("Union") filed a complaint alleging that the Town of Hudson ("Town") violated RSA 273-A:5, I (b), (e), (g), (h), and (i), when the Town denied two police officers compensation for their time spent travelling to and from a training program, and directed one of the officers to cease any further submission of claims for travel-time compensation. The Union claims that the Town's actions are an unfair labor practice because they allegedly violate Article XII, Section 7 of the parties' collective bargaining agreement.

As remedies, the Association requests that the PELRB 1) find that the Town committed an unfair labor practice by failing to bargain in good faith, 2) order the Town to cease and desist in its domination of and interference with the employee organization, 3) order the Town to bargain in good faith, 4) order the Town to publicly post the findings of the board for thirty business days, 5) order the Town to make the police officers whole for their lost overtime, and 6) order the Town to make the Union whole for any and all cost expenses incurred to pursue the prohibited practice charge.

The Town filed its answer denying the charges and a motion to dismiss on November 19, 2007. The Town subsequently filed an amended answer on November 20, 2007 in which it qualified one admission included in its first answer. The Town contends that the PELRB is prohibited from exercising jurisdiction over this matter because the parties' collective bargaining agreement contains a grievance procedure that provides final and binding arbitration. The Town claims that the issue at hand is reserved for the contractual grievance procedure because the

analysis of the alleged violation involves the interpretation and application of the overtime compensation clause found in the parties' collective bargaining agreement.

Accordingly, the Town requests that the PELRB: 1) dismiss the unfair labor practice charge; 2) award such other relief as justice may require.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on November 30, 2007.

PARTICIPATING REPRESENTATIVES

For the Union: Karen Clemens, Esq., Associate General Counsel, AFSCME Council 93

For the Town: Mark T. Broth, Esq., Devine, Millimet & Branch, P.A.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the matter should be dismissed because the matter involves the interpretation of contract language and is reserved for the contractual grievance process.
- (2) Whether the Town committed an unfair labor practice through its denial of compensation for the complainants' travel time to and from a training seminar.

WITNESSES

For the Union:

1. Patrol Officer Patrick Broderick
2. Master Patrolman Doug Dubuque
3. Steve Lyons, AFSCME Staff Representative

For the Town:

1. Chief Richard Gendron
2. Any witnesses listed by the Union

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 Union:

1. Collective Bargaining Agreement, effective July 1, 2005 – June 30, 2007
2. E-mail from Chief Gendron to Master Patrolman Dubuque regarding Immigrations Customs Enforcement (ICE) training, dated July 24, 2007
3. Additional documents discovered.

For the Town:

1. Collective Bargaining Agreement, effective July 1, 2005 – June 30, 2007
2. Correspondence between Police Dept. and Officers
3. Correspondence between Town and Union
4. Electronic time records
5. Any exhibits listed by the Union.

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. The Union's representative shall file any response or objection to the Town's Motion to Dismiss no later than December 14, 2007.
2. The parties' representatives shall each file a brief to address the applicability, if any, of federal and state statutory wage and hour standards to the complainants' claim for travel-time compensation no later than December 28, 2007. This brief should also address the Board's authority to exercise jurisdiction over claims arising from federal and state statutes, outside of RSA 273-A.
3. The parties' representatives shall file any additional preliminary, procedural or dispositive motions no later than December 28, 2007, and any responses or objections thereto shall be filed on or before January 8, 2008.

4. The parties' representatives shall meet, or otherwise confer, on or before January 4, 2008, to attempt to stipulate to the submission of this case in pleadings or, in the alternative, without the need for formal testimony. The parties shall file forthwith a joint statement setting forth the extent of any such agreement and include a proposed schedule for the parties' filings.
5. If the matter is to proceed to a hearing before the Board, counsel shall meet, or otherwise confer, on or before January 4, 2008 in order to agree on joint exhibits and to compose a mutual statement of agreed facts. The parties' representatives shall file all joint exhibits, factual stipulations, and other exhibits properly marked for identification on or before January 4, 2008. If these materials are submitted electronically the parties do not have to otherwise file the original and five copies.
6. 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.
7. 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:

**January 11, 2008 @ 9:30 a.m.**

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

So ordered.

November 30, 2007.

  
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Neil P. Daly  
Staff Counsel/Hearing Officer

Distribution:  
Karen Clemens, Esq.  
Mark T. Broth, Esq.