



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

City of Portsmouth	*	
	*	
Complainant	*	Case No: P-0709-30
	*	
v.	*	Decision No. 2008-041
	*	
Portsmouth NH Police Patrolmen's Union,	*	
NEPBA Local 11	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The City of Portsmouth and its Police Commission (the "City") filed an unfair labor practice complaint on January 29, 2008 alleging that The Portsmouth NH Police Patrolmen's Union, NEPBA Local 11 (the "NEPBA") committed unfair labor practices in violation of RSA 273-A:5 II (a), (d), (e), (f) and (g). The complaint concerns the actions of Detective Steve Arnold, who the City asserts appeared at the January 7, 2008 sergeant's exam and in effect encouraged other officers to protest against the exam by walking out of the room with him. Detective Arnold then left the room, but the other officers remained and took the exam. The City also claims that Detective Arnold has publicly criticized the department's promotional process as corrupt and has also been critical of the department's failure to promote him to sergeant. The City contends that NEPBA has violated Article 53 of the parties collective bargaining agreement, which provides in part that "neither the Union nor any Union Officer, Representative or employee shall engage in, induce or encourage any strike (whether sympathetic, general or any other kind), walk-out, work stoppage, sit-down, slow-down, withholding of services, or any other interference with the operations of the Police Department...The Union and it's Officers shall not be considered to have violated this Article if they have used all reasonable efforts to prevent or cause to cease the Activities prohibited by this Section."

As remedies, the City requests that the PELRB: 1) issue a cease and desist order against the New England Police Benevolent Association, NEPBA Local #11 and Detective Arnold, prohibiting interference with Department operations and inflammatory statements relative to Detective Arnold's personal grievances against the Chief of Police and Commission; 2) order the

New England Benevolent Police Association and NEPBA Local #11 to take all reasonable steps necessary to prevent or cause to cease any further interference with Departmental operations as prohibited by Article 53 of the CBA and such other conduct that may be in violation of RSA 273-A: 5, II (a), (d), (e), (f) and (g); and 3) order the New England Benevolent Police Association and NEPBA Local #11 to reimburse the Commission all of its fees and expenses in filing and litigating this Charge.

The NEPBA filed its answer to the complaint on February 7, 2008. The NEPBA disputes the City's characterization of events and contends it has satisfied its obligations to use reasonable efforts to prevent or cause to cease any conduct that is prohibited. The NEPBA also claims that the complaint is untimely in whole or in part under RSA 273-A:6, VII, that the City is required to proceed via binding arbitration, that the complaint lacks the required specificity, that the NEPBA is not responsible for the conduct at issue, that the board lacks jurisdiction in this matter, and that the City has failed to list and discuss remedies available in addition to those available under RSA 273-A as required by Pub 201.02 (b)(6).

The NEPBA requests that the PELRB: 1) deny and dismiss the ULP with prejudice; 2) order the Commission to pay the Respondents all of the costs and expenses, including attorneys fees, incurred in defending this frivolous action; 3) order such other relief as the board deems just and appropriate.

Upon the NEPBA's motion, the pre-hearing conference originally scheduled for February 21, 2008 was rescheduled to February 26, 2008, at which time the undersigned Hearing Officer conducted the pre-hearing conference at the PELRB offices in Concord.

PARTICIPATING REPRESENTATIVES

For the City: Thomas J. Flygare, Esq.

For the Union: Peter J. Perroni, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether Detective Arnold's actions, and the NEPBA's response to those actions, constitute a violation of RSA 273-A:5 II (a), (d), (e), (f) and (g)?
- (2) Whether the complaint is barred in whole or in part by the 6 month limitation period contained in RSA 273-A:6, VII?
- (3) Whether the City is required to proceed to binding arbitration?
- (4) Whether the board has jurisdiction over the City's complaint?

WITNESSES

For the City:

1. Chief Michael Magnanat
2. Captain John Yeardi

For the Union:

1. Officer Richard Brabazon, Union president
2. Detective Steve Arnold
3. Andrew Ray, NEPBA representative

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 City:

1. Collective Bargaining Agreement
2. Newspaper Clippings

For the Union:

1. First Amendment to United States Constitution

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 one-half (½) 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 5 days prior to the date of the evidentiary hearing.

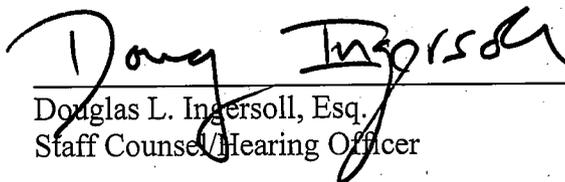
DECISION

1. At the pre-hearing, the City agreed to provide the NEPBA with copies of the documents it relies on in this case.

2. The City's motion to continue the March 6, 2008 hearing was presented at the pre-hearing. The motion is granted, and a new hearing date will be established by subsequent notice.
3. The parties shall file a status report on or before March 7, 2008. On the basis of this report, a further pre-hearing conference may be scheduled and conducted in this matter.
4. The parties agree that the Portsmouth Police Patrolmen's Union, NEPBA Local 11 and not NEPBA, Inc. is the proper party to this matter and the caption shall be amended accordingly. The complaint against NEPBA, Inc. is dismissed.
5. The parties' representatives shall meet, or otherwise confer, on or before March 26, 2008 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 5 days prior to the date of the hearing.
6. 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 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.

So ordered.

February 29, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:

Peter J. Perroni, Esq.

Thomas J. Flygare, Esq.