



**STATE OF NEW HAMPSHIRE**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**HAMPTON POLICE ASSOCIATION, INC.**

**COMPLAINANT**

**v.**

**TOWN OF HAMPTON**

**RESPONDENT**

**CASE NO. P-0719-22**

**DECISION NO. 2009-051**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: March 11, 2009

Appearances: Complainant: J. Joseph McKittrick, Esq.  
Respondent: Elizabeth A. Bailey, Esq.

**Background:**

Hampton Police Association, Inc ("Union") filed an unfair labor practice complaint against the Town of Hampton ("Town") on January 26, 2009. The Union claims that the Town violated RSA 273-A:5, I (a), (b), (e), (g), (h) and (i) by breaching its obligation to recommend a tentative Collective Bargaining Agreement (CBA), which its Board of Selectmen accepted, to the Town Meeting voters.

The Union requests the PELRB to find that the Town committed an unfair labor practice, and that the Union is entitled to its costs and fees in bringing the instant action. The Union also requests the PELRB to require the Town to petition the Superior Court for a Special Town Meeting to be held to consider funding the CBA as recommended by the Board of Selectmen.

The Town filed an answer and affirmative defenses on February 10, 2009. The Town denies the charge of unfair labor practice and contends that the Union failed to state a claim upon which relief may be granted. The Town further contends that the PELRB has no authority to order the relief the Union seeks, specifically to require the Town to petition the Superior Court for a Special Town Meeting, and that the PELRB has no authority to order the Board of Selectmen or any individual selectman either to vote in a specific way concerning whether to recommend voter approval of the cost items in a CBA or to state in the selectmen's warrant for a Town Meeting that the selectmen have voted to recommend a particular appropriations article when they have not in fact done so.

The Town requests that the PELRB dismiss the complaint, deny the Union all forms of relief it seeks, and award the Town its reasonable attorney's fees and costs.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Town had an obligation to recommend a tentative CBA to the voters.
2. Whether the Town's failure to recommend a tentative CBA to the voters constitute an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (e), (g), (h) and (i).
3. Whether the PELRB has the authority to grant the relief sought by the Union.
4. Whether the Union's complaint should be dismissed for failure to state a claim upon which relief may be granted.

## WITNESSES

For the Union:

1. Steven Henderson
2. Rick Griffin
3. Frederick Welch
4. Dick Bateman
5. James Higgins, Esq.

For the Town:

1. Frederick Welch
2. James Higgins, Esq.
3. Rick Griffin
4. Michael Schwotzer

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

## EXHIBITS

For the Union:

1. Various negotiation documents
2. Minutes of Board of Selectmen to accept CBA
3. Minutes of Board of Selectmen to not recommend CBA to voters

For the Town:

1. Board of Selectmen's Meeting Minutes, dated December 29, 2008
2. Board of Selectmen's Meeting Minutes, dated January 12, 2009
3. Board of Selectmen's Meeting Minutes, dated January 13, 2009

4. Warrant Article 14, as presented at the Town's January 31, 2009 Deliberative Session
5. The proposed CBA that is the subject of Warrant Article 14
6. Amendment to Agreement Between Hampton Board of Selectmen and the Hampton Police Association, Inc.
7. Various negotiation documents, emails and correspondence, including but not limited to August 26, 2008 "Union's Package Proposal," and August 29, 2008 email from Attorney Higgins to Attorney McKittrick, copying Mr. Welch, regarding "Police contracts"

Both parties reserve the right to amend their Lists 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. 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.

#### DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
  
2. The parties shall prepare a Statement of Stipulated Facts and shall determine and inform the PELRB whether they would prefer to submit the case on stipulated facts and briefs no later than **March 18, 2009**. If the parties decide to submit the case on stipulated facts and briefs, the parties shall file an agreed upon proposed schedule of the submission of the stipulated facts, exhibits, opening briefs and reply briefs, if any, no later than March 19, 2009. In the absence of communication from the parties indicating their preference for submission of the case on stipulated facts and briefs, the following schedule will apply.

3. The parties shall file a Statement of Stipulated Facts no later than 5 days prior to the scheduled evidentiary hearing.

4. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than 5 days prior to the scheduled evidentiary hearing.

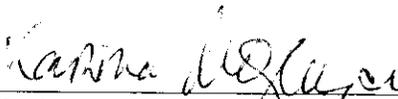
5. The parties shall pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

#### HEARING

Unless otherwise ordered as a result of the filing of a motion to submit the case on stipulated facts and briefs or other motion, the evidentiary hearing between the parties will be held on **March 25, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 5 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 5 days prior to the date of hearing.

So ordered.

March 11, 2009

  
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Karina A. Mozgovaya, Esq.  
Staff Counsel/Hearing Officer

Distribution:  
J. Joseph McKittrick, Esq.  
Elizabeth A. Bailey, Esq.