



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

**AFSCME COUNCIL 93 LOCAL 3657/  
WEARE POLICE DEPARTMENT**

**COMPLAINANT**

**CASE NO. G-0092-1**

**v.**

**DECISION NO. 2009-071**

**TOWN OF WEARE POLICE DEPARTMENT**

**RESPONDENT**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: April 9, 2009

Appearances: Complainant: Karen E. Clemens, Esq.  
Respondent: Mark T. Broth, Esq.

**Background:**

AFSCME Council 93 Local 3657/Weare Police Department (Union) filed an unfair labor practice complaint against the Town of Weare Police Department (Town) on March 11, 2009. The Union claims that the Town engaged in direct dealing with a bargaining unit member, Officer Hebert, in violation of RSA 273-A:5 (e) after Officer Hebert expressed his concerns about pending reassignment to the bargaining unit representative; that the Town restrained or coerced bargaining unit members in the exercise of their rights in violation of RSA 273-A:5 (a) by chastising Officer Hebert for notifying the Union of his concerns regarding the pending

reassignment; and that the Town undermined the parties' dispute resolution process in violation of RSA 273-A:5 (b) when it informed Officer Hebert that he may have violated the parties' Collective Bargaining Agreement (CBA) by attempting to exercise his statutorily protected rights.

The Union requests the PELRB to find that the Town violated RSA 273-A:5 (a), (b), and (e); to order the Town to bargain in good faith; to order the Town to restore Officer Hebert to the work schedule that he held prior to the reassignment on September 12, 2008; to order the Town to make Officer Hebert whole in any way; to order the Town to publicly post the violation for 30 business days; and to order the Town to make the Union whole for any and all costs and expenses incurred to pursue the prohibited practice charge.

On March 26, 2009 the Town filed an answer denying the charge. The Town argues that RSA 273-A:11 (a) provides that represented employees and employer representatives can meet to discuss and attempt to resolve grievances that have not yet been reduced to writing without participation of certified representatives; and that the parties' CBA encourages the informal resolution of grievances and does not require participation by a certified representative in that process.

The Town requests that the PELRB dismiss the charge and award the Town its costs, including attorneys' fees.

#### ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Town's Police Chief engaged in direct dealing with bargaining unit members.

2. Whether the Town's Police Chief attempted to intimidate and interfere with bargaining unit members' rights by chastising Officer Hebert for notifying the Union of his concerns.

3. Whether the Town violated RSA 273-A:5, I.

4. Whether the Town's actions are permissible in accordance with RSA 273-A:11.

### WITNESSES

For the Union:

1. Officer Hebert
2. Officer William Duffy
3. Sergeant Louis Chatel
4. Lieutenant Carny
5. Sergeant Bob Peterson

For the Town:

6. Chief Gregory Begin
7. Officer Hebert
8. Officer William Duffy
9. Sergeant Louis Chatel

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. Collective Bargaining Agreement
2. Letter from Duffy to Begin re reassignment

3. Letter from Duffy to Hebert
4. Email from Chatel to Begin and Begin's response
5. Letter from Duffy to Begin dated September 9, 2008

For the Town:

1. Collective Bargaining Agreement 2006-2009
2. Correspondence between Duffy and Begin
3. Response and memorandum from Begin to Duffy dated September 12, 2008
4. Grievance documents

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. At the pre-hearing conference, the parties indicated that they are engaged in meaningful discussions which may lead to a settlement. On that basis, the parties jointly moved to continue the evidentiary hearing currently scheduled for April 21, 2009. The parties' motion to continue is granted. Based upon representations and requests of the parties, the evidentiary hearing is rescheduled for **May 27, 2009**. A rescheduling notice will be issued.

3. The complaining party shall inform the PELRB of any settlement of the pending issues immediately indicating that the respondent agrees to the cessation of litigation on the pending matters.

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

4. The parties shall prepare and file a Statement of Contested Facts no later than 5 days prior to the scheduled evidentiary hearing.

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

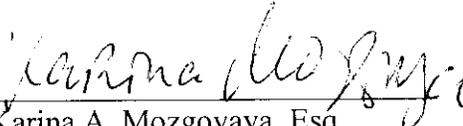
6. The parties shall pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

#### HEARING

Unless otherwise ordered as a result of the filing of a motion to continue or other motion, the evidentiary hearing between the parties will be held on **May 27, 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 4 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 10 days prior to the date of hearing.

So ordered.

April 9, 2009

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

Distribution:

Karen E. Clemens, Esq.

Mark T. Broth, Esq.