



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**NEW HAMPSHIRE TROOPERS ASSOCIATION/
TROOPER STEFAN CZYZOWSKI**

COMPLAINANT

CASE NO. G-0097-1

v.

DECISION NO. 2009-113

**NEW HAMPSHIRE DEPARTMENT OF SAFETY,
DIVISION OF STATE POLICE**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 8, 2009

Appearances: Complainant: John S. Krupski, Esq.
Respondent: Marta Modigliani, Esq.

Background:

New Hampshire Troopers Association (Union) filed an unfair labor practice complaint against the New Hampshire Department of Safety, Division of State Police (State) on May 8, 2009. The Union claims that the State violated RSA 273-A:5, I (d), (g), and (i) by unilaterally altering the standard operating procedure for the review of use of deadly force in connection with

its investigation of the incident involving Trooper Stefan Czyzowski. The Union contends that the State's actions constitute a unilateral change in terms and conditions of employment.

The Union requests the PELRB to find that the State committed an unfair labor practice, to order the State to negotiate any change in terms and conditions of employment, and to order the State to cease and desist from violating the regulations promulgated by the State.

On May 26, 2009 the State filed an answer denying the Union's allegations. The State claims that, with regard to the incident involving Trooper Czyzowski, it complied with the applicable rules of the Professional Standards of Conduct and with the Division of Personnel Administrative Rules and that its actions were within the State's exclusive managerial authority. The State also asserts that the Union failed to adequately plead the facts to support its claims.

The State requests the PELRB to find that it did not commit an unfair labor practice and to dismiss the complaint.

At the pre-hearing conference, the counsel for the Union indicated that he intends to file a motion to continue an adjudicatory hearing on the ground that the Union's witness, Trooper Czyzowski, has been activated for military duty and deployed to the currently unknown location. Also, counsel for the State informed the undersigned that, to this date, the Union failed to respond to the State's informal Request for Information.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the State committed an unfair labor practice in violation of RSA 273-A:5, I (d), (g) and (i) in connection with its investigation of the use of force incident involving Trooper Czyzowski.

2. Whether the State unilaterally changed the terms and conditions of Trooper Czyzowski's employment.

WITNESSES

Joint:

1. Trooper Czyzowski
2. TFC William Graham
3. Colonel Frederick Booth
4. Lt. Aucoin
5. Sgt. Ford

For the State:

1. Major Russell Conte
2. Major Susan Forey
3. Captain John Lelacheur

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

Joint:

1. Collective Bargaining Agreement
2. State Police Trooper I job description
3. Light Duty Status, Chapter 22-B
4. Rules and Regulations regarding Professional Standards of Conduct
5. Relevant communications
6. Attorney General's Department of Justice Officer Deadly Force Investigation Protocol dated February 9, 2004

For the Union:

1. Chapter 1-C, review of use of force
2. News release of December 17, 2008

For the State:

1. Applicable Division of Personnel Rules

2. RSA 21-P:7

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 Union shall respond to the State's Request for Information no later than **June 12, 2009**.
3. Any Motion to Continue the currently scheduled adjudicatory hearing shall be filed on or before **June 12, 2009** and shall contain the required information in accordance with Pub 201.08; otherwise, the adjudicatory hearing will be held as previously scheduled.
4. The parties shall prepare and file a Statement of Stipulated Facts no later than 10 days prior to the scheduled adjudicatory hearing.
5. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than 10 days prior to the scheduled adjudicatory hearing.
6. The parties shall pre-mark any exhibits prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.03.

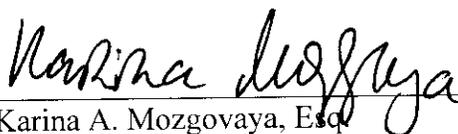
HEARING

Unless otherwise ordered as a result of the filing of a Motion to Continue or other motion, the adjudicatory hearing between the parties will be held on **June 25, 2009 at 9:30 AM**

at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled adjudicatory hearing shall be continued, all time references as appear in paragraphs ## 4, 5, and 6 of the DECISION SECTION shall be based upon the rescheduled date for the adjudicatory hearing. The time set aside for this hearing is 6 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.

June 8, 2009



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

Distribution:
John S. Krupski, Esq.
Marta Modigliani, Esq.