



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Manchester Police Patrolman's Association

v.

City of Manchester Police Department

Case No. G-0103-2

Decision No. 2010-180

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: October 6, 2010

Appearances: John S. Krupski, Esq. for the Manchester Police Patrolman's Association

Thomas I. Arnold, III, Esq. for the City of Manchester Police Department

Background:

The Manchester Police Patrolman's Association (Association) filed an unfair labor practice complaint against the City of Manchester Police Department (City) on August 30, 2010. The Association claims that the City committed an unfair labor practice in violation of RSA 273-A:5, I (a), (c), (e), (g), and (i) when it ordered an officer to submit to an involuntary polygraph examination for an administrative disciplinary investigation and refused to allow a union representative to be present during the polygraph examination. The Association also contends that several questions asked during the polygraph examinations were unrelated to the officer's duties in violation of *Garrity* rules set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967). The

Association requests that the PELRB declare that the City committed an unfair labor practice, that mandatory polygraph examinations in disciplinary investigatory hearings are a mandatory subject of bargaining, and that the use of polygraph examination in this case violated the employee's *Garrity* rights; order the City to cease and desist from ordering other employees to submit to a polygraph examination and from using the results of the polygraph examination; and order the City to negotiate any implementation of a polygraph examination and any policy or procedures regarding mandatory polygraph examinations in disciplinary investigatory hearings.

The City denies the charges and argues that polygraph examinations of Police Department personnel are within the management discretion of the City and that the Association claims are barred by the doctrines of res judicata and collateral estoppel as the issues in this case have been already decided by the PELRB. See Decision No. 81-72. The City also claims that the union representative was removed only from the actual administration of the polygraph examination in accordance with industry standards and in order to permit the administration of a meaningful examination; and that any question that was allegedly unrelated to the officer's duties was related to the administration of the polygraph examination in accordance with industry standards. The City requests that the PELRB dismiss the complaint with prejudice.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the use of polygraph examination in the context of disciplinary investigation and the manner in which it was administered in this case constitute an unfair labor practice in violation of RSA 273-A:5, I (a), (c), (e), (g), or (i).

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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 witnesses appearing on their respective list will be available at the hearing. 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.

DECISION

1. "Parties" means the Association, the City, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference the parties indicated that they will attempt to resolve the issues related to disclosure of internal investigation documents concerning Officer Kevin Covey and to disclosure of identity of the Association's expert witness and of substance of the expert witness' testimony. The parties are expected to resolve these issues prior to the deadline to file a final statement of stipulated facts and witness and exhibit lists.
3. The parties shall attempt to resolve by agreement any requests for information related to internal affairs investigation concerning Officer Covey. The Association shall promptly disclose to the City the identity and credentials of any witness the Association intends to use at the hearing to provide expert testimony.
4. The parties shall prepare and file a final statement of stipulated facts no later than 10 days prior to the date of adjudicatory hearing.
5. The parties shall exchange and file their final witness and exhibit lists no later than 10 days prior to the date of adjudicatory hearing.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **November 4, 2010 at 9:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 hours.

So ordered.

October 7, 2010


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

Distribution:

Thomas I. Arnold, III, Esq.

John S. Krupski, Esq.