



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

**New England Police Benevolent Association Local 28**

v.

**Town of Epping**

**Case No. G-0172-1**  
**Decision No. 2011-168**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 13, 2011<sup>1</sup>

Appearances: Peter J. Perroni, Esq. for the New England Police Benevolent Association Local 28

David E. LeFevre, Esq. for the Town of Epping

Background:

The Union filed an unfair labor practice complaint on May 12, 2011 claiming that the Town engaged in regressive bargaining in violation of RSA 273-A:5, I (a), (e), and (g) and RSA 273-A:3 when it refused to proceed with negotiations unless the Union agreed to remove a previously agreed upon pay step structure from the putative contract. The Union requests that the PELRB order the Town to cease and desist from violating RSA 273-A provisions and order the Town to pay the costs incurred by the Union during negotiations.

The Town denies the charges and claims that the parties abandoned all negotiations relative to the pay step structure when they agreed to a one-year putative contract with a three percent cost of living increase; and that the Union took a position that there could be no

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<sup>1</sup> The parties filed a Joint Pre-Hearing Worksheet on June 6, 2011.

agreement unless it included a pay step structure. The Town requests that the PELRB deny the relief requested and dismiss the complaint. The Town filed a Motion for Specifications, or In the Alternative, to Dismiss asserting that the complaint is unsupported by any factual allegations in violation of Pub 201.02 and requesting that the PELRB order the Union to submit specifications or, in the absence of specifications, dismiss the complaint. The Town also filed a Motion for Pre-hearing Ruling that Attorney LeFevre May Not Be a Witness in This Case, or In the Alternative, Motion to Continue.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the Town violated RSA 273-A:5, I (a), (e), and (g) and/or RSA 273-A:3 when it allegedly refused to proceed with negotiations unless the Union agreed to remove a previously agreed upon pay step structure from the putative contract.

#### WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. The issue of whether Attorney LeFevre can be called as a witness is addressed in DECISION SECTION below. 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 Union, the Town, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings

submitted in these proceedings.

2. The Union shall file a supplement to the complaint setting forth the factual basis for its charge in greater detail on or before **June 17, 2011**. The Town's motion for specifications and/or dismissal is otherwise denied as the Union clarified its claims at the pre-hearing conference.
3. The Town's motion for a pre-hearing ruling or a continuance is addressed as follows. Nothing in PELRB rules prevents an attorney from serving as an advocate and a witness in adjudicatory hearings. Furthermore, Attorney LeFevre's continued representation is permissible under N.H. Rule of Professional Conduct 3.7 taking into account the likely scope of his testimony and the possible prejudice to the PELRB and the Union, which might potentially develop but is not identified at this juncture, and balancing this prejudice, or lack thereof, against the clear interest of Attorney LeFevre's client, the Town, in having Attorney LeFevre continue his service and avoid having new counsel assigned to the case. Nevertheless, the parties may, by agreement, seek a continuance of the June 30, 2011 adjudicatory hearing in order to allow the Town to retain substitute counsel. Such motion to continue must be filed on or before **June 23, 2011**. Otherwise, the hearing shall proceed as scheduled and will not be recessed for the purpose of taking Attorney LeFevre's testimony or providing the Town with time to find substitute counsel unless unanticipated conflict of interest issues arise during the course of the hearing. Determination as to admissibility or relevance of Attorney LeFevre's testimony is reserved for the hearing.
4. The parties shall exchange and file their final witness and exhibit lists no later than 10 days prior to the date of hearing.

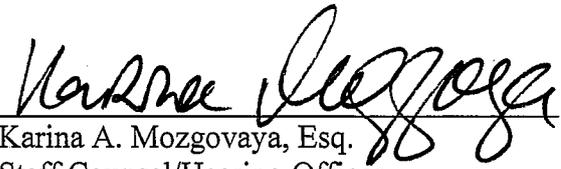
5. The parties shall prepare and file a final statement of stipulated facts no later than 10 days prior to the date of hearing.
6. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

### 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 **June 30, 2011 at 9 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 3 hours.

So ordered.

June 13, 2011

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

Distribution:  
Peter J. Perroni, Esq.  
David E. LeFevre, Esq.