



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEPBA, Moultonborough Police Association

and

Town of Moultonborough

Case No. G-0144-1
Decision No. 2012-271

Order on Motion for Review of Hearing Officer Decision

On November 27, 2012 the Town filed a Motion for Review of the October 31, 2012 hearing officer decision (PELRB Decision No. 2012-243). Motions for Review of Hearing Officer Decisions are governed by Pub 205.01, which provides in part as follows:

(a) Any party to a hearing or intervenor with an interest affected by the hearing officer's decision may file with the board a request for review of the decision of the hearing officer within 30 days of the issuance of that decision and review shall be granted. The request shall set out a clear and concise statement of the grounds for review and shall include citation to the specific statutory provision, rule, or other authority allegedly misapplied by the hearing officer or specific findings of fact allegedly unsupported by the record.

(b) The board shall review whether the hearing officer has misapplied the applicable law or rule or made findings of material fact that are unsupported by the record and the board's review shall result in approval, denial, or modification of the decision of the hearing officer. The board's review shall be made administratively based upon the hearing officer's findings of fact and decision and the filings in the case and without a hearing or a hearing de novo unless the board finds that the party requesting review has demonstrated a substantial likelihood that the hearing officer decision is based upon erroneous findings of material fact or error of law or rule and a hearing is necessary in order for the board to determine whether it shall approve, deny, or modify the hearing officer decision or a de novo hearing is necessary because the board concludes that it cannot adequately address the request for review with an order of approval, denial, or modification of the hearing officer decision. All findings of fact contained in hearing officer decisions shall be presumptively reasonable and lawful, and the board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.

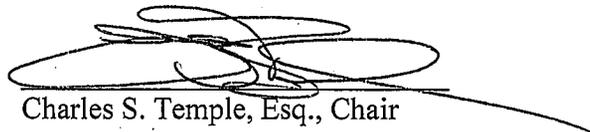
The Town questions whether the hearing officer has properly determined that there is a sufficient written majority authorization under Pub 301.05. The Town correctly states that any confidential authorization cards signed by probationary employees and any confidential authorization cards signed by Sergeants and the Corporal (positions excluded from the bargaining unit by the court's order) should not be counted in determining whether there is a sufficient written majority authorization.

The hearing officer order affirmatively states there is a majority authorization but the hearing officer decision did not expressly state that any confidential authorization cards signed by probationary employees or by Sergeants or the Corporal were not counted and were in fact excluded.¹ Our findings on review of the file are as follows. After the exclusion of any cards signed by Sergeants, the Corporal, and the probationary employees there is a sufficient written majority authorization. This is because at least six non-probationary employees holding bargaining unit positions signed confidential authorization cards, a number which is sufficient to establish a written majority authorization in this case.

The hearing officer correctly stated that a majority of bargaining unit employees have selected the Union as their exclusive representative and we approve the hearing officer's decision.

So ordered.

December 12, 2012



Charles S. Temple, Esq., Chair

By unanimous vote of Chair Charles S. Temple, Esq. and Board Members Richard J. Laughton, Jr. and James M. O'Mara, Jr.

Distribution:

Kevin E. Buck, Esq.
Anne M. Rice, Esq.

¹ The hearing officer's order states "[t]he Court's removal of the Sergeants and the Corporal does not affect the bargaining unit's eligibility under the ten-employee minimum requirement of RSA-A:8, I because the unit still has ten employees, a majority of whom selected the Union as their exclusive representative." (emphasis added)