



State of New Hampshire
Public Employee Labor Relations Board
New England Police Benevolent Association

and

Town of Bow

Case No. G-0204-3
Decision No. 2018-176

Order

On July 17, 2018 the NEPBA filed a motion for rehearing of PELRB Decision No. 2018-085 (June 18, 2018). On July 18, 2018 the NEPBA filed a hearing transcript in support of its rehearing motion. The Town duly filed an objection on July 23, 2018.

Motions for rehearing are governed by RSA 541:3 and Pub 205.02, which provides in part as follows:

Pub 205.02 Motion for Rehearing.

(a) Any party to a proceeding before the board may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order within 30 days after the board has rendered its decision and order by filing a motion for rehearing under RSA 541:3. The motion for rehearing shall set out a clear and concise statement of the grounds for the motion. Any other party to the proceeding may file a response or objection to the motion for rehearing provided that within 10 days of the date the motion was filed¹, the board shall grant or deny a motion for rehearing, or suspend the order or decision complained of pending further consideration, in accordance with RSA 541:5.

¹ Scheduling considerations have delayed the issuance of this order.

The crux of NEPBA's pending motion for rehearing is that the hearing officer's decision is based on erroneous findings of fact as to the supervisory authority of sergeants. In particular, the NEPBA questions the hearing officer's factual findings as to the nature and extent of the sergeants' authority to evaluate and discipline other proposed bargaining unit positions, which the NEPBA maintains has resulted in a misapplication of relevant law, including RSA 273-A:8, II and *Appeal of Moultonborough*, 164 N.H. 257 (2012), and the consequent improper exclusion of sergeants from the proposed bargaining unit.

We decline, however, to delve into the hearing transcript to assess the NEPBA's evidentiary arguments at this stage in the proceedings. The board previously considered, and denied, the NEPBA's motion for review of the hearing officer decision without the benefit of a hearing transcript. In that motion the NEPBA also challenged the factual basis for the hearing officer's decision. However, the NEPBA's failure to support the motion for review with a hearing transcript meant that our evaluation and assessment of the hearing officer's factual findings was limited, since Pub 205.01 "Review of a Hearing Officer Decision," provides that:

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.

(Emphasis added). The issue before us now is whether our prior order on the motion for review was incorrect. This is not another direct review of the hearing officer's decision under Pub 205.01,² and the NEPBA's filing and reliance upon a hearing transcript to challenge the hearing

² The opening paragraph of the NEPBA's motion for rehearing states that the "NEPBA...requests rehearing *of the decision of the hearing officer issued in this matter*. Because the Decision is directly contrary to the evidence on the threshold question of the sergeants' supervisory authority and is otherwise contrary to the law, it is unlawful, unjust, and unreasonable."

officer's findings of fact as though we are now deciding a second Pub 205.01 motion for review is procedurally improper. The motion for rehearing is denied.

So ordered.

Date: 9/27/18


Peter G. Callaghan, Esq., Chair

By unanimous vote of Alternate Chair Peter C. Callaghan, Esq., Board Member Senator Mark Hounsell, and Board Member James M. O'Mara, Jr.

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