



State of New Hampshire
Public Employee Labor Relations Board

**Portsmouth Police Ranking Officers Association,
Affiliated with NEPBA, Inc.**

v.

City of Portsmouth

**Case No. G-0163-2
Decision No. 2019-053**

Pre-Hearing Memorandum and Order

Date of Conference: March 7, 2019

Appearances: Peter J. Perroni, Esq., for the Complainant
Thomas M. Closson, Esq., for the Respondent

Background:

On January 11, 2019, the Portsmouth Police Ranking Officers Association, affiliated with NEPBA, Inc. (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the City of Portsmouth (City) had violated RSA 273-A:5, I (a), (c), (e), and (g) when it refused to produce information requested by the Union in connection with a grievance prosecution. The Union alleges that it filed a grievance concerning a promotional process utilized by the Police Commission; that it requested, among other things, all original written materials relative to the oral board process and audio recordings of all candidates interviewed; and that the City failed to produce the materials requested by the Union. The Union claims that the requested information is necessary to process the grievance and that by refusing to produce the information, the City improperly denies employees and the Union timely access to

the grievance procedure, thereby interfering with employees statutory rights. The Union requests, among other things, that the PELRB order the City to produce the requested materials immediately.

The City denies the charge and asserts, among other things, that it has the exclusive management right to evaluate and promote employees; that there is nothing in the parties' CBA that entitles the Union to any of the documents it is seeking; and that the documents requested by the Union are confidential personnel records exempt from public disclosure under RSA 91-A:5, IV.

Issues for Determination by the Board

Whether the City violated RSA 273-A:5, I (a), (c), (e), and/or (g) as charged by the Union.

Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01.

Decision

1. "Parties" means the Union, 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 City's counsel indicated that the City is ready to produce most of the material requested by the Union. However, the City continues to refuse to produce any personal notes made by a Commissioner who was involved in a promotional process. Accordingly, on or before **March 14, 2019**, the parties shall submit a list of outstanding issues in this case.
3. At the pre-hearing conference, the parties indicated that they would like to submit this

case on stipulated facts, exhibits, and briefs. As discussed at the conference, the parties shall file a joint request to submit this case on briefs no later than **March 14, 2019**. Any such request shall contain a proposed schedule for submission of stipulated facts, joint exhibits, opening briefs, and reply briefs, if any.

4. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts no later than **March 15, 2019**. It is understood that each party may rely on the representations of the other party that witnesses and exhibits appearing on their respective lists will be available at the hearing.
5. The requirement that the parties file copies of proposed exhibits prior to the date of hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five copies of each exhibit to the hearing. 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, the adjudicatory hearing in this case will be held on **March 19, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 2 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least 5 days prior to the date of hearing.

So ordered.

Date: 3/7/2019



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

Distribution: Peter J. Perroni, Esq.
Thomas M. Closson, Esq.