



State of New Hampshire
Public Employee Labor Relations Board

New England Police Benevolent Association

v.

Franklin Police Department

Case No. G-0189-3

Decision No. 2023-044

Pre-Hearing Memorandum and Order

Date of Conference: March 9, 2023

Appearances: Peter Perroni, Esq., for the Complainant

Paul T. Fitzgerald, Esq., and Kelley L. Stonebraker, Esq., for the Respondent

Background:

On February 7, 2023, the New England Police Benevolent Association (Union), filed an unfair labor practice complaint under the Public Employee Labor Relations Act claiming that the City of Franklin Police Department (City) had violated RSA 273-A:5, I (a) ("To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter"); (b) ("To dominate or to interfere in the formation or administration of any employee organization"); (c) ("To discriminate in the hiring or tenure, or the terms and conditions of employment of its employees for the purpose of encouraging or discouraging membership in any employee organization"); (g) ("To fail to comply with this chapter or any rule adopted under this chapter"); and (h) ("To breach a collective bargaining agreement"). The Union alleges, among other things, as follows: (1) Officer Drouin is the Union President and a vocal critic of the Police Department

(PD) management; (2) in December, 2022, he encouraged a "vote of no confidence" in the Chief of PD the union membership was contemplating; (3) the Union meeting "to discuss position on Management" was scheduled for December 17, 2022; (4) on December 16, 2022, Officer Drouin was notified that the Chief placed him on paid administrative leave pending internal affairs investigation; (5) Officer Drouin was not permitted to attend the December 17, 2022 Union meeting or enter the PD premises; (6) he was also forbidden to serve as a Union representative at grievance hearings on behalf of other officers; and (7) the City's actions were motivated "by a desire for retaliation for protected Union activity" and were an attempt to "prevent a vote of no confidence." The Union requests that the PELRB order the City (1) to cease and desist from violations; (2) to reinstate Officer Drouin with back pay; (3) to provide report of compliance to the PELRB; (4) to pay the costs incurred by the Union; (5) to make any impacted Union member whole; and (6) to publicly post the PELRB's order on the PD's website.

The City denies the charges. The City asserts, among other things, that Officer Drouin criticized the PD management in retaliation for being disciplined; that the internal affairs investigation and discipline were not related to the protected union activity; and that Mr. Drouin was not forbidden to attend the Union meeting. The City requests that the PELRB dismiss the complaint and award the City reimbursement of its legal fees and costs in defending this action.

Issues for Determination by the Board

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

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.

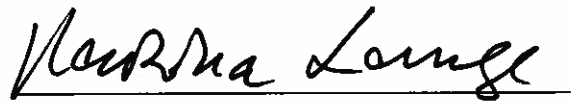
2. At the pre-hearing conference, the parties discussed the Union's request for information (e.g., internal affairs investigation report with supporting documentation and management communications regarding the Union's December 17, 2022 meeting) needed for the Union's case preparation and a possibility of issuance of subpoenas. To that effect, the parties are encouraged to share information voluntarily. If any issues arise during the parties' preparation for the hearing, the parties shall notify the PELRB as soon as practicable and an order shall issue as necessary and appropriate.
3. A rescheduled hearing date shall be established in a subsequent notice. See PELRB Decision No. 2023-043 (granting the City's motion to continue hearing). The time set aside for this hearing is 4 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 10 days prior to the hearing date.
4. A statement of stipulated facts shall be filed no later than 10 days prior to the hearing date. The parties shall also exchange and file with the PELRB final lists of witnesses and exhibits no later than 10 days prior to the hearing date. 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. Exhibits shall be pre-marked in the upper right-hand corner as Joint, Union, or City. Joint and Union's exhibits shall be marked numerically. The City's exhibits shall be marked alphabetically. Exhibits pre-marked for identification only shall be marked as in the following example: "Union Ex.1 (ID)." Exhibits to be admitted without objection shall be pre-marked as in the following example: "Union Ex. 2." The exhibit lists must also indicate

whether an exhibit is pre-marked for identification only or is to be admitted without objection.

6. The requirement that the parties file copies of proposed exhibits prior to the hearing date is suspended, and the parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall 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.

So ordered.

Date: 03/09/2023



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

Distribution: Peter Perroni, Esq.
Paul T. Fitzgerald, Esq.
Kelley L. Stonebraker, Esq.