Appeal of this decision was affirmed in part and vacated in part on appeal per August 3, 2010 Supreme Court order in *Appeal of Town of Derry*, NH Supreme Court Case No. 2009-0384.

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DERRY POLICE PATROLMEN'S ASSOCIATION

v.

TOWN OF DERRY

CASE NO. P-0702-22&23
DECISION NO. 2009-057

APPEARANCES

Representing: Derry Police Patrolmen's Association
J. Joseph McKittrick, Esq., McKittrick Law Offices,
North Hampton, New Hampshire

Representing: Town of Derry
Thomas M. Closson, Esq., Flygare Schwarz & Closson, PLLC
Exeter, New Hampshire

BACKGROUND

The Derry Police Association (the "Association") filed two unfair labor practice complaints against the Town of Derry. In Case No. P-0702-22, filed July 11, 2008, the Association complains that the Police Department violated the Weingarten rights of Association members during the course of internal investigation interviews conducted in early May, 2008. The Association complains that: 1) Captain Thomas improperly selected union steward Officer Jackson to act as the union representative during the internal investigation interviews; 2) Captains Thomas and Feole failed to provide Officer Jackson with sufficient information

concerning the subject of the interviews; 3) Captains Thomas and Feole provided insufficient notice of the interviews, thereby preventing the Association from arranging for the attendance of a union steward a higher level of expertise/experience than Officer Jackson; and 4) the Town improperly prevented Association president Mike Houle from serving as a union steward by unnecessarily interviewing him as part of the investigatory process. The Association contends that the Town has violated RSA 273-A:5, I (a), (b), (c), (e), (g), (h), and (i).

In Case No. P-0702-23, filed on September 9, 2008, the Association complains about: 1) the new requirement that bike patrol officers wear a reflective vest; 2) statements to a bike patrol officer concerning Association advice; 3) the conduct of internal investigations concerning the "pooling" of the laundry allowance provided under the parties' collective bargaining agreement; 4) the manner in which the Department conducted a Sergeant's examination in June and July, 2008; 5) Lieutenant Surrette's statements to Detective Boudreau concerning the manner in which Detective Boudreau used his laundry allowance at the end of the contract year; and 6) the reassignment of Officer Houle from the Detective Division to the Patrol Division following the Sergeant's exam. The Association contends the Town retaliated against, interfered with, dominated and discriminated against bargaining unit employees and the employee organization in violation of RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and (i).

The Town filed its answer in Case No. P-0702-22 on July 21, 2008. The town contends that Captain Thomas properly contacted Officer Jackson, a union steward, to request his service as union steward during the internal investigation interviews. The Town filed its answer in Case No. P-0702-23 on September 30, 2008. The Town denies that it has committed unfair labor practices as alleged in this complaint.

The Association also filed a Motion for an Immediate Cease and Desist Order in Case No. P-0702-23 on September 9, 2008 seeking to have Officer Houle immediately restored to a position in the Detective Division. The parties initially appeared for hearing in Case No. P-0702-23 on September 23, 2008. However, the Association's motion to continue that hearing was granted and the above captioned were cases consolidated and subsequently scheduled for hearing on October 20 and 22, 2008. *See* PELRB Decision No. 2008-191. Thereafter the board heard these matters on October 20 and 22, 2008 at the offices of the PELRB in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties argued their cases at the conclusion of the evidence, and the record was held open until November 14, 2008 to allow the parties to submit post hearing briefs.

FINDINGS OF FACT

1. The Association is the board certified exclusive representative for Derry Police Officers below the rank of Sergeant pursuant to RSA 273-A:10.

2. The Town of Derry is a public employer within the meaning of RSA 273-A:1, X.

3. The Association and the Town are parties to a July 1, 2007 to June 30, 2008 Collective Bargaining Agreement (the "2007-08 CBA"). Town Ex. 1.

4. Officer Michael Houle is the president of the Association. Officer Houle has 22 years of experience as a police officer, the last 18 of which have been with the Town of Derry police Department. Officer Houle's service includes 13 years in the Patrol Division and 9 years in the Detective Bureau.

5. Prior to 2008 officers serving on the bike patrol did not wear reflective vests. Instead, their clothing, including collared short sleeve shirts, contained reflective material, and their bicycles also displayed reflective devices.

6. On September 5, 2006 the Association's Safety Committee requested that the Department replace existing orange traffic reflective vests with ANSI class 2 high visibility yellow vests to create a safer work environment for officers working accident scenes or traffic detail. Town Exhibit 2. On September 11, 2006 Chief Garone responded in part by stating that he hoped "to receive the vests in the very near future at which time they will be issued. We are also making the necessary changes in our uniform policies to address the new authorized garment."

7. The reflective vests were eventually obtained, and Chief Garone decided they should also be worn by bike patrol officers, a requirement that met some resistance from the Association members. Some objected because they believed the vests made them a conspicuous target, a concern related in part to the murder of Officer Michael Briggs, a Manchester Police Officer shot and killed while on bike patrol duty. Some also believed the requirement was the Department's response to the fact that the Association had been an outspoken proponent for the reflective vests and had involved Town administration in their efforts to get Chief Garone's approval of the requested change. Subsequently some bike patrol officers attempted to resign from bike patrol duty but their requests were denied. There was also a decline in the number of officers volunteering for bike patrol duty. At a roll call during this time period Sergeant Morelli commented about the lack of volunteers for bike patrol, stating in effect that individuals running the union wouldn't be there forever and individual officers should start thinking about their own careers.

8. According to Chief Garone, the increase in safety resulting from bike patrol officers wearing the new high visibility vests outweighed the bike patrol officers' complaints and concerns about the new requirement.

9. Paragraph 4 of Article XIX of the parties July 1, 2007 through June 30, 2008 collective bargaining agreement provides as follows:

> The Town will provide for the cleaning of fifty-two garments per year (such as one shirt, one trousers)(sic) and in addition, will provide for the cleaning of outerwear twice during the winter season.

10. The fifty-two garment figure recited in paragraph 4 is a reduction from a higher number contained in prior agreements, and in return bargaining unit members received an increase in their clothing purchase allowance.

11. The Department tracks the use of the cleaning allowance, and in the past individual officers have been required to pay for any use in excess of the allowance. Association Exhibit D.

12. In 2008 Department officials noticed that some officers were using the clothing allowance for the first time and that other officers were close to maximizing their clothing allowance. The administration ultimately learned that officers were "pooling" or "sharing" their cleaning allowance. This was accomplished by one officer writing another officer's name on the paperwork necessary to use the cleaning allowance in order to charge the use to another officer's account.

13. Chief Garone believed that officers who were sharing the cleaning allowance might be committing forgery or theft by deception and that the practice also called into question the integrity of the involved officers. Chief Garone concluded that an internal investigation was justified, and between May 1 and May 5, 2008 Captain Thomas and Captain Feole interviewed 8 officers concerning the "pooling" of the cleaning allowance.

14. Shortly before the first interview Captain Thomas approached Officer Jackson and requested his presence in a Department interview room. Captain Thomas told Officer Jackson that his role would be union steward. Shortly thereafter Captain Thomas, Captain Feole, and

Officer Jackson gathered in the interview room and Officer Jackson was briefly informed about the subject of the interviews.

15. Captains Thomas and Feole did not offer to reschedule the interviews to some other time, nor did they ask Officer Jackson if some other Association representative should attend the interviews in his place. Officer Jackson did not request a rescheduling of the interviews, he did not request the attendance of a different Association representative in his place, and he did not object to the fact that Captain Thomas had contacted him and requested his participation as the Association's steward. Likewise, the officers being interviewed did not object to Officer Jackson's service, request a different Association representative, or request that the interviews be rescheduled to a later date. All officers being interviewed were provided with a written Garrity warning. Town Exhibit 19.

16. Officer Jackson had been designated as an Association steward for more than a year, was designated on the Association bulletin board at having his status, but he had never served as an Association representative in connection with any disciplinary matters and had never received any labor relations training.

17. On June 3, 2008, after the internal investigation interviews were complete but before the issuance of the report providing the results of the investigation, Chief Garone consulted with County Attorney James Reams about the internal investigation and whether *Laurie*[1] issues were implicated. Based upon his discussion with attorney Reams, Chief Garone concluded there were no *Laurie* issues. Town Exhibit 12.

18. During the course of the interviews Captains Thomas and Feole instructed the officers not to discuss the subject of the interview with other officers. Officer Jackson understood that he was prohibited from discussing the ongoing interviews with Officer Houle

[1] *State v Carl Laurie*, 139 N.H. 325 (1995).

because, according to Captain Feole, Officer Houle might be subject to investigation. Officer Houle was eventually interviewed, but he was not ordered to refrain from discussing the subject of the interview with other officers. Association Exhibit C.

19. On June 9, 2008 Chief Garone issued written reprimands to eight officers for either "having allowed another officer to utilize your individual laundry cleaning allowance in a manner intended to conceal that activity from the Department" or "having utilized another officer's individual laundry cleaning allowance in a manner intended to conceal that activity from the Department." In each case, Chief Garone concluded that the officers had engaged in "conduct unbecoming an officer" and that repeating the behavior in the future could result in "further discipline, up to and including termination of employment." The total value of the cleaning allowance in dispute is less than $100. Town Exhibit 18.

20. The Association has grieved Chief Garone's written reprimands, and their appropriateness is the subject of arbitration proceedings.

21. After the completion of the internal investigation concerning the pooling of the cleaning allowance, and prior to June 30, 2008, Detective Boudreau expended most, if not all, of his remaining cleaning allowance. This involved the cleaning of more garments in a short period of time than might be expected if Detective Boudreau had used his cleaning allowance on a regular basis throughout the contract year.

22. In early July, 2008 Lieutenant Surrette told Detective Boudreau that the manner in which he had used his cleaning allowance was childish and immature, reflected poorly on his decision making ability, that Lieutenant Surrette believed the Association had instructed Detective Boudreau to use up his remaining cleaning allowance and in effect Detective Boudreau should have ignored the Association's request. Lieutenant Surrette also commented that the

administration could apply Department rules and regulations in the same way. Lieutenant Surrette made similar comments to Detective Turgeon, who according to Lieutenant Surrette understood his point and did not make an issue of it.

23. Chief Garone posted a notice of Sergeant Position in May, 2008. The posting describes the examination process (written – 40%, oral board – 20%, and staff evaluation – 20%) to be used to establish a one year eligibility list of candidates, and provided instructions to interested candidates. Town Exhibit 4.

24. Lieutenant Twiss assembled a three member oral board consisting of Lieutenant Cunha from the Manchester Police Department, Lieutenant Hansen of the Nashua Police Department, and Lieutenant Brown of the Concord Police Department. Shortly before the oral board process, Lieutenant Twiss provided the oral board with questions prepared by Captain Feole and contained in Town Exhibit 6. Although members of past oral boards may have been supplied with questions, the practice was not routine. Lieutenant Twiss also informed the members of the oral board that they could ask follow up or their own questions. The oral board's reports and comments concerning Officer Houle are contained in Town Exhibits 7 and 9.

25. Department rules and regulations do not establish any particular order for the written exam, the oral board, or the staff evaluation. In the past, the staff evaluation has typically preceded the oral board. In the present case, the staff evaluation component of the exam occurred after the oral board. The staff evaluation is usually conducted as a joint meeting of Department Sergeants, Lieutenants, and Captains at which the various candidates are discussed and evaluated. As part of this process each staff member prepares an individual evaluation.

26. Staff evaluations of Officer Houle are contained in Town Exhibit 8. Captain Thomas and Captain Feole gave Officer Houle a score of 17 in their staff evaluation. Such a low score is

unusual, and it was significantly lower than the scores awarded by other staff evaluators, as the next lowest score was 75. Association Exhibit E.

27. The results of the Sergeant's exam were distributed in July, 2008 and Officer Houle placed third among the six candidates who took the Sergeant's exam. Town Exhibit 5. Officer Houle's final position would not have changed even if Captains Thomas and Feole had provided higher or even perfect scores in their staff evaluations.

28. In October 2005 Captain Thomas prepared a memorandum concerning staff modifications. Town Exhibit 13. The memorandum states the 17 officers are "eligible to retire with 20 or more years of service" and outlines a plan to address anticipated retirements, including a "plan to develop officers for lateral assignments and promotions."

29. Article XXIV – Management Rights of the July 1, 2007 through June 30, 2008 collective bargaining agreement provides as follows:

> Except to the extent that there is contained in this Agreement an express and specific provision to the contrary, all of the authority, power, rights, jurisdiction, and responsibility of the Town and the Police Department are retained and reserved exclusively to the Town and the Chief of Police, including but not limited to, the right…to change, reassign, abolish, continue, and divide existing job classifications for all jobs, to require from each employee the efficient utilization of his services; to hire, promote, assign, and retain employees…

30. In late July, 2008 Officer Houle was reassigned from the Detective Division to the Patrol Divison, effective August, 23 2008. Officers in the Patrol Division work a 4-2 schedule, and Officer Houle was put on the 2:30 p.m. to 11:00 p.m. shift. In the Detective Division Officer Houle had worked a 5-2 Monday through Friday schedule on the 3:00 p.m. to 11:00 p.m. shift. He also frequently worked on weekends.

31. In August, 2008 Captain Thomas rejected Officer Houle's subsequent request to be assigned to the 5:30 p.m. to 2:00 a.m. shift, indicating that Officer Houle could bid for a shift at

the time of the fall shift change. Officer Houle eventually obtained a different shift at the fall shift change.

32. At the time of Officer Houle's reassignment, 2 patrol officers had returned to duty as school resource officers, and there was also a need to make room in the detective bureau for younger detectives, so they would have adequate training and experience when more senior detectives retired.

DECISION AND ORDER

DECISION SUMMARY

Based upon the Derry Police Department's conduct of an internal investigation into the use of a contractual benefit as well as other Department action, the board finds that the Derry Police Department committed an unfair labor practice because it improperly restrained, coerced and interfered with bargaining unit members in the exercise of rights conferred by RSA 273-A and also sought to dominate or interfere with the administration of the Association, all in violation of RSA 273-A:5, I (a), (b) and (c). The board also finds that the Department violated RSA 273-A:5, I (h) and breached the 2007-08 CBA by using non-contractual procedures to address a contract dispute. The administration of the Derry Police Department is ordered to cease and desist from such practices, to permanently remove the results of the internal investigation from the personnel files of the affected officers, and to remove from Officer Houle's files and Department records the low scores Captains Thomas and Feole awarded during the Sergeant's exam. The Association's remaining complaints concerning the mandatory use of a reflective vest on bike patrol, the general administration of the Sergeant's exam, Weingarten issues, and the reassignment of Officer Houle from the detective bureau to the patrol division are dismissed.

JURISDICTION

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. *See* RSA 273-A:6, I. PELRB jurisdiction is proper in this case as the Association has alleged violations of RSA 273-A:5, I (a), (b), (c), (c), (g), (h), and (i).

DISCUSSION:

Much of the controversy in this case stems from Paragraph 4 of Article XIX in the parties' July 1, 2007 to June 30, 2008 collective bargaining agreement ("2007-08 CBA") concerning a laundry allowance:

> The Town will provide for the cleaning of fifty-two garments per year (such as one shirt, one trousers)(sic) and in addition, will provide for the cleaning of outerwear twice during the winter season.

As required by RSA 273-A:4, the 2007-08 CBA also contains a "workable grievance procedure" which culminates in final and binding arbitration. The contract also contains a less formal "Consultation" provision, set forth in Article IV, which contemplates informal discussion of "matters of mutual concern." Both of these contractual mechanisms appear well-suited to address possible contract disputes, including those that might concern the laundry allowance. In 2008 there was such a dispute, as by the end of April the Department knew that some members of the bargaining unit were "pooling" their laundry allowance - while the Association did not affirmatively notify management that it believed bargaining unit members were entitled to pool the laundry allowance, neither did the Association conceal the pooling activity, as evidenced by the manner in which bargaining unit members completed related paperwork and the relative ease with which management detected the practice.

The logical course of action for the Department to follow at this point according to the 2007-08 CBA and generally accepted practices applicable to collective bargaining agreement

disputes was to take steps such as the issuance of a Department memorandum on the subject forbidding the practice and requiring reimbursement so that the dispute could be addressed through the grievance process if necessary. Proceeding in this manner would also have been consistent with past Department action taken when laundry allowance overcharge issues had arisen, in response to which the Department required reimbursement from officers who had exceeded their allowance. Alternatively, the Department could have arranged a consultation with Association representatives to discuss the situation. Instead, in what even the Department admits was a novel departure from such contractual procedures, Chief Garone authorized an internal investigation.

The internal investigation was followed in July, 2008 by several encounters between Lieuteant Surrette and bargaining unit members Detective Boudreau and Detective Turgeon, also concerning the use of the contractual laundry benefit. In both cases, Lieutenant Surette in effect counseled the officers against exhausting a contractually negotiated benefit during the final days of the contract, plainly indicating that any Association advice provided to the officers to this effect should have been and should be disregarded.

The autonomy of employee organizations, and the right of public employees to participate in such organizations and in the process of securing and benefiting from collective bargaining agreements without employer reprisal or interference, are recognized and protected in several provisions of RSA 273-A:5, I:

> It shall be a prohibited practice for any public employer to:
>
> (a) to restrain, coerce or otherwise interfere with its employees in the exercise of 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.

(h) To breach a collective bargaining agreement.

The board concludes that the Department used an internal investigation, a non-contractual process, to retaliate against Association membership in general and Association leadership in particular, to intimidate Association members, to alienate Association members from Association leadership, to improperly dissuade Association members from challenge to or disagreement with management on matters of contract interpretation and administration, to interfere with the administration of the Association, and to obtain otherwise unavailable information about the conduct of Association business. The Department's conduct of an internal investigation into the possible overuse of a contractual benefit, involving in total less than $100, was also a clear message to all bargaining unit employees of the administration's displeasure, and all bargaining unit members were placed on notice that they could be subjected to similar treatment.

Lieutenant Surette's actions were a continuation of what we find to be management's anti-union animus which included the theme that Association members needed to demonstrate stronger support for and allegiance to the interests of their employer at the cost of less support for the rights and interests secured to them by RSA 273-A in general and the specific benefits obtained through the collective bargaining process or risk adverse impacts on career advancement opportunities. Lieutenant Surette's actions are a further example of the Department's improper interference with its employees in the exercise of rights conferred by the statute as well as dominance and interference in the administration of an employee organization.

The board reaches similar conclusions about Sergeant Morelli's statements to officers concerning problems staffing bike patrol and the low scores Captains Thomas and Feole awarded

to Office Houle in staff evaluations completed during the Sergeant's exam. When confronted with a diminished interest among officers in bike patrol duty, Sergeant Morelli addressed the situation with statements to the effect that the involved officers should reconsider Association advice or guidance on such matters as it could be detrimental to their careers. While Sergeant Morelli's general criticism about an officer's refusal to volunteer for certain duty or requests for reassignment from unpopular duty may have some validity, the manner in which he linked his statements to the Association and in the process suggesting that an officer's perceived connections to the Association could negatively impact career opportunities was improper.

As to the low scores Officer Houle received on the Sergeant's exam, it is true that these scores did not change the exam's outcome, but the actions of Captains Thomas and Feole are still subject to scrutiny. The low scores are undoubtedly attributable at some level to legitimate concerns Captains Thomas and Feole have about Officer Houle as well as personal animus between the involved individuals. However, in this case, based upon the internal investigation and its aftermath, the unusually low level of the scores and the fact that they were identical, the board concludes that Captains Thomas and Feole's staff evaluations of Officer Houle were primarily based upon their and the Department's negative opinion about the Association and Officer Houle's individual role as Association president. The board recognizes that leadership qualities and general support of the Department are legitimate qualifications and obvious factors to consider when evaluating candidates. At the same time, however, Captains Thomas and Feole cannot evaluate Officer Houle on the basis of a negative judgment about the Association and the manner in which Officer Houle has discharged his responsibilities as an official Association representative relative to the competing interests of the public employer. Their conduct

represents a restraint and interference with Association members and the administration of the Association.

The board resolves all remaining issues in favor of the Department, including Association claims that Officer Houle's reassignment to Patrol, the reflective vest requirement on bike patrol, and the organization and conduct of the Sergeant's exam[2] constituted illegal anti-union animus. In Appeal of Prof. Firefighters of E. Derry, 138 N.H. 142 (1993), the court adopted the federal standard for deciding whether an employer's actions were improperly motivated by a desire to retaliate against an employee because of union activity:

> [T]o establish an unfair labor practice under federal law, the union must prove by a *preponderance of the evidence* that the discharge or elimination was motivated by a desire to frustrate union activity. The employer can meet the union's evidence of retaliatory motivation with its own evidence, as an employer's motivation is a question of fact to be determined by the board from the consideration of all the evidence. If the board finds by a preponderance of the evidence that the employer was unlawfully motivated to some degree, an employer can still avoid being adjudicated a violator of federal law by proving by a preponderance of the evidence that regardless of the unlawful motivation, the employer would have taken the same action for wholly permissible reasons.

Id. at 144-145 (emphasis in original)(citations omitted). In this case, regardless of any unlawful motivation, the Department has established by a preponderance of the evidence that it would have administered the Sergeant's exam, reassigned Officer Houle to patrol, and required bike patrol officers to wear the reflective vest for wholly permissible reasons. The Department provided a valid explanation for the changes in the sequence of the different components of the Sergeant's exam. With respect to Officer Houle's reassignment to patrol, the Department has broad discretion in the direction and assignment of personnel under RSA 273-A:1, XI and the Management Rights provision of the 2007-08 CBA, and it offered legitimate reasons for the reassignment which the board finds are sufficient to avoid the charge of anti-union animus.

[2] With the exception of the identical low scores awarded by Captains Thomas and Feole, as already discussed.

Likewise, Chief Garone had legitimate safety based reasons which justify his requirement that bike patrol officers wear the reflective vests.

As to the operation of *Weingarten* rights in this case, *see National Labor Relations Board v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), the Department argues that the board should find that such rights do not apply under New Hampshire public sector labor law or, alternatively, that the Department has not violated any rights the Association members may enjoy. At the time in question, the Department in fact identified Officer Jackson as an Association steward, requested his attendance at the interviews in that capacity, and provided him with information about the subject matter of the interviews, thereby behaving as though the officers being interviewed were entitled to union representation. As reviewed in *Appeal of Exeter Police Association*, 154 N.H. 61, 64 (2006), *Weingarten* rights arise when an employee requests union representation in connection with proceedings that may result in discipline. Although in the *Exeter* case the court did not decide "what, if any, *Weingarten* rights attach in New Hamsphire," this board has recognized employees' rights to such representation in a number of its decisions. *Id.* at 66. Therefore, it is the board's determination that consistent with its prior decisions, the officers being interviewed were entitled to union representation upon request, and the board further finds that the Department did not violate their right to such representation in this case.

At the time of the internal investigation interviews the involved officers accepted union representation from Officer Jackson and they did not request union representation from someone other than Officer Jackson. If either Officer Jackson or the involved officers believed that the Department was infringing upon their rights under *Weingarten* because of Officer Jackson's involvement or due to other reasons, it was incumbent upon them to request a delay in the interview process and/or the attendance of a different Association representative. Such requests

were not made and the Department could justifiably conclude that Officer Jackson and the involved officers were satisfied with the arrangements. The board rejects the Association's argument that the Department had an independent duty to do more than it did on the facts of this case. The Department cannot be blamed to the extent the Association believes Officer Jackson was in fact not prepared or qualified to act as a union steward at the interviews - the selection, training and education of such representatives is the Association's business.

In conclusion, the Department does not have the right to use the tactics it employed in this case to interfere with the administration of the Association, control or influence bargaining unit members on matters of contract interpretation, or to usurp or undermine the Association or its members' confidence in or allegiance to the Association. The Department's actions constitute unfair labor practices in violation of RSA 273-A:5, I (a), (b) and (c). The board also finds that the Department's use of a non-contractual process to address the laundry allowance dispute constituted a breach of the parties' collective bargaining agreement and violated RSA 273-A:5, I (h)(to breach a collective bargaining agreement). This particular dispute should have been addressed through the discussed contractual procedures. The board cannot sanction the use of the internal investigation process to address contract disputes like the one at issue in this case.

In accordance with the foregoing, the Association's complaint that the Department has committed unfair labor practices in violation of provisions of RSA 273-A:5, I is sustained in part and dismissed in part. The Department is ordered to cease and desist from the practices which the board has found to be in violation of the statute, and in particular to refrain from further attempts to interfere with Association members in the exercise of their contractual and statutory rights, and to refrain from undermining, influencing or limiting the extent to which bargaining unit members rely upon Association leadership and guidance in matters concerning their rights

under RSA 273-A in general as well as matters of contract interpretation and administration in particular by express or implied threats of adverse impacts on individual employee's career opportunities. The administration is also ordered to permanently remove the results of the internal investigation from the personnel files of the affected officers and the low scores Captains Thomas and Feole awarded to Officer Houle during the course of the Sergeant's exam from Officer Houle's files and other Department files. The Town of Derry shall post this decision for thirty days in a clearly visible location calculated to inform all members of the police department, such as a police department employee bulletin board, and shall file a certificate of posting with the board within ten days.

So ordered.

Signed this 18th day of March, 2009.

/s/ Jack Buckley
Jack Buckley, Chair

By unanimous vote. Chair Jack Buckley presiding with alternate Board Members Kevin E. Cash and Sanford Roberts, Esq. also voting.

Distribution:
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