

**Nashua Fire Fighters Association, IAFF Local 789 v. City of Nashua**, Decision No. 2019-250 (Case No. G-0122-7).

**Background:** The union claimed that the city had violated RSA 273-A:5, I (e) & (h) when it unilaterally changed the method of calculating and processing the military duty pay under Article 28 of the collective bargaining agreement (CBA). The city denied the charges and claimed that the disputed changes to the processing of military pay were supported by clear language in the CBA. The city asserted that although in the past it paid employees under CBA Article 28 based on anticipated military pay, under Article 28 it was not obligated to make military duty payments until after “the showing of satisfactory evidence of the amount of pay received for such service.” The city filed a motion to dismiss on the ground that the PELRB lacked jurisdiction over the union’s complaint because the parties’ CBA provided for final and binding arbitration and the union’s unfair labor practice claim required the interpretation of CBA language.

**Decision:** The majority of the hearing panel found that, under the "positive assurance" test of *Appeal of the City of Manchester*, 144 N.H. 386, 388 (1999), the PELRB lacked jurisdiction over the complaint because the Article 28 military duty pay benefit dispute fell within the scope of the CBA and was subject to the final and binding arbitration. By a 2-1 vote of the Board, the city’s motion to dismiss was granted.

***Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.***