This decision was reversed on appeal per August 19, 2010 Supreme Court order in *Appeal of New Hampshire Division of State Police, NH* Supreme Court Case No. 2009-496.

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEW HAMPSHIRE TROOPERS ASSOCIATION / TROOPER LOU COPPONI ET AL.

v.

CASE NO. P-0754-23
P-0754-25
DECISION NO. 2009-119

NEW HAMPSHIRE DEPARTMENT OF SAFETY, DIVISION OF STATE POLICE

ORDER ON MOTION FOR REHEARING

On June 1, 2009 the State filed a Motion for Rehearing pursuant to Pub 205.02 and RSA 541:3 with respect to PELRB Decision 2009-088, issued April 30, 2009. The Association has submitted its objection. The State's motion is granted in part in order to clarify the board's decision and otherwise denied.

The board's ruling is based upon its finding that the State proceeded with the disputed reassignments on the basis of the State's unilateral determination that the existing residency of particular troopers did not comply with the residency requirements set forth in Article 21.7. This negotiated contract provision provides that "[a]ny employee may live within a town within a patrol area to which she/he is assigned or within a reasonable distance from his/her assigned patrol area." The State's general management right to assign employees does not override or render nugatory the Article 21.7 contract language, and based upon the record established in this

case the board has provided an appropriate remedy. The board's decision does not mean that the State cannot otherwise exercise its management right to determine employee assignments based upon sufficiently independent and legitimate grounds and in a manner which does not conflict with the negotiated terms and conditions of employment.

The State's Motion is otherwise denied. Upon due consideration of the other points raised by the State the board is satisfied that both parties were provided with a fair hearing, including a fair and reasonable opportunity to submit the basis for the respective positions into the record. Further, the State's motion does not establish that it was unfairly prejudiced in these proceedings to a degree that requires any change to the board's decision or which requires further proceedings in this matter. For example, the State complains that these two cases were improperly consolidated and the board improperly failed to conduct a separate hearing on the State's motion to dismiss. As to consolidation, the board notes that PELRB Decision No. 2008-262 reflects that these cases were consolidated with the agreement of the parties and also that the State's request for a separate hearing on its motion to dismiss was acknowledged but "denied at this time." The manner in which the board ultimately considered and rendered its decision on the State's motion to dismiss is consistent with the conduct of administrative proceedings at this agency and board rules, particularly where it was necessary to receive relevant evidence into the record and the motion to dismiss could not be addressed solely upon procedural grounds based upon the parties' pleadings.

The State also complains that this matter should have been scheduled for two days of hearing. In this case, following the pre-hearing process, the presiding officer set aside six hours for hearing and expressly provided that a request for an additional day of hearing would "be entertained at the conclusion of the hearing....but a second hearing day is not being scheduled at

this time." PELRB Decision No. 2009-012. The presiding officer at pre-hearing conferences is required to assess the amount of time that will likely be required for hearing and did so in this case, but did not foreclose the right of the State to request additional time at the completion of the first day of hearing. The State has not demonstrated that it should have been granted additional hearing time and more specifically the nature and extent of any resulting prejudice stemming from the completion of the hearing in one day. Finally, the board notes that its decision was based upon the entire record, and not a portion of the record as the State suggests.

So ordered.

Signed this 15th day of June, 2009.

Charles S. Temple, Esq., Chair

By unanimous vote. Chair Charles S. Temple, Esq. presiding with Board Members Carol M. Granfield and Kevin E. Cash also voting.

Distribution: John S. Krupski, Esq.
Marta A. Modigliani, Esq