



NEPBA RESPONDS TO POST QUESTIONS



To: **ALL NEPBA LOCALS**

From: **JERRY FLYNN, EXECUTIVE DIRECTOR**

Re: **(1) Request for Clarification regarding POST Re-Certification Packet Officer Questionnaire; (2) Demand to Bargain pursuant to G.L. c. 150E, and; (3) Union's Initial Request for Information Pursuant to G.L. c. 150E**

Date: 4/8/22

On behalf of the members of our bargaining unit, I am writing to seek clarification on the POST Re-certification / Officer Questionnaire. It is the union's position, based on an initial review of the questionnaire, that the process may impact several mandatory subjects of bargaining. The Union also believes that the requirement to respond to many, if not all, of the inquiries in the questionnaire violates our members' rights to privacy and other constitutionally protected rights.

Importantly, the Massachusetts Department of Labor Relations recently issued a complaint against a municipality that failed to bargain with the union over the implementation of several aspects of the new Police Reform Law, where such aspects impacted such things as work duties, privacy rights, standards of performance and disciplinary procedures (see NEPBA Local 911 v. City of Worcester, DLR No. MUP-21-8790). Such subjects appear to be impacted here as well.

Pursuant to G.L. c. 150E, the union demands that the status quo be maintained until such time as all bargaining obligations are met. Moreover, to the extent that our union is currently engaged in successor contract bargaining (or we are about to enter such negotiations), we demand that any such bargaining take place at the main table discussions.

In the meantime, the following information is requested under the collective bargaining law, G.L. c. 150E:

- 1. What are our members obligations relative to the Questionnaire? Is responding to it a condition of employment? Are the members ordered to complete the questionnaire, and if so, will discipline result for failing to answer?*
- 2. If the Questionnaire is voluntary, what shall be the consequences for choosing not to answer some or all of the questions?*
- 3. Provide any and all criterion that will be considered by all evaluators' determinations as to "good moral character and fit for employment as a law enforcement officer."*

4. *Will any officer be subject to discipline or further investigation based on any responses given, and if so, provide all criteria upon which such discipline or further investigation can be based.*
5. *Does the officer have the option to answer the questions verbally, and if not, why not?*
6. *What efforts will the Department and evaluator take to ensure confidentiality of the officers' answers, as well as the notes and records of the interviews? Will such materials be produced in response to a public records request? Will the records be maintained, and if so, for how long? Does the Department consider the records exempt from public records disclosure, and if so, why?*
7. *What is the Department's process for determining whether an officer is of good moral character and fit for duty? Please provide the standard that will be used, and explain all factors that will be considered, and in particular, what weight the officers' answers - or refusal to answer - will factor into such determination.*
8. *The Questionnaire states that an officer may indicate that he/she has the option of not answering a question if they have good faith belief that they might waive a privilege, protection or right recognized by law. Please explain what constitutes a "good faith belief" and what qualifies as a protection or right recognized by law.*
9. *Will the Department investigate or follow up to verify or corroborate the officers' responses, and if so, what process will be followed in doing so?*
10. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members are current in all tax payments? If the department has no such need, please indicate such need. Is providing this information to the Department a condition of employment?*
11. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have ever received a permit or license to carry a firearm, and related details regarding the history of same, particularly in light of the department's existing knowledge on this issue. Is providing this information to the Department a condition of employment?*
12. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been defendants in a civil suit, and the details of such civil suits as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
13. *Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been the*

subject of a restraining order, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?

- 14. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether, through the questionnaire process, our members have been suspended for more than 5 days in connection with any employment, and the details of such as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
- 15. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether in the last 5-years, our members have sent or displayed a public communication on social as set forth in the questionnaire. Is providing this information to the Department a condition of employment?*
- 16. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members currently or have ever belonged to any organization as set forth in Question No, 7 of the Questionnaire. Is providing this information to the Department a condition of employment?*
- 17. Explain in detail whether and, if so, explain why the Department has a compelling need to know whether our members "thinking broadly" have and provide the information sought Question No. 8, and is providing such information to the Department a condition of employment? Please also define what information in particular would meet the criteria provided in the question.*
- 18. Is an officer's attestation to the form under the penalties of perjury a condition of employment? If so, why? Is the officer subject to criminal prosecution based on his or her answers (both for admissions to conduct, or for perjury)? Please provide information as to any process that would be employed in such circumstances.*
- 19. Please list all events and circumstances that could result in or justify a negative recommendation by the Department regarding moral character or fitness for duty.*
- 20. What is the Department's complete definition of good moral character and fitness for duty, what is the source of said definition?*

Please produce this information to the union as required by G.L. c. 150E within the timeframes contemplated by that statute. Upon receiving the information, the union demands bargaining as to any and all contemplated changes affecting mandatory subjects of bargaining. In the meantime, demand is made that the status quo be maintained.