STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
C2011-000036

IN THE MATTER OF:

Local Government Center, Inc.; Local Government Center Real Estate, Inc.; Local Government Center HealthTrust, LLC; Local Government Center Property-Liability Trust, LLC; HealthTrust, Inc.; New Hampshire Municipal Association Property-Liability Trust Inc.; LGC-HT, LLC; Local Government Center Workers' Compensation Trust, LLC; and the following Individuals: Maura Carroll, Keith R. Burke, Stephen Moltenbrey, Paul G. Beecher, Robert A. Berry, Roderick MacDonald, Peter J. Curro, April D. Whittaker, Timoth J. Ruehr, Julia N. Griffin, Paula Adriance and John Andrews

RESPONSE OF THE NEW ENGLAND POLICE BENEVOLENT ASSOCIATION, INC. TO THE OBJECTIONS TO ITS MOTION TO INTERVENE

Now comes the New England Police Benevolent Assoc., Inc., IUPA, AFL-CIO ("NEPBA") and files this response to the objections of the Respondents LGC and John Andrews to the NEPBA's motion to intervene in this matter. Because (1) the NEPBA is an "interested party" statutorily entitled to participate in these proceedings; (2) the NEPBA has both direct and associational standing; and (3) there is no merit to the Respondents' predictions of procedural doom especially given the hearing officers inherent and statutory power to control the hearing, the NEPBA requests that the objections to its motion to intervene be overruled. As reason therefore, the NEPBA states as follows:

1. The NEPBA is the certified bargaining representative of more than thirty (30) employee bargaining units representing publically employed law enforcement personnel and retirees from such positions with municipalities in the State of New Hampshire. The NEPBA, inter alia, negotiates on behalf of employees in the subject bargaining units pursuant to RSA 273-A. When collective bargaining agreements (CBA's) are negotiated with municipalities, the NEPBA is a party to such agreements. See e.g. http://www.nh.gov/pelrb/collective/index.htm. (collecting public employee collective bargaining agreements).

2. The vast majority of employees in bargaining units represented by the NEPBA are, or were, employed by municipalities which obtained products and services offered by the Respondents which are governed by RSA 5-B and RSA 421-B. Id.

3. For instance, among others, law enforcement bargaining units represented by the NEPBA in Lebanon, Moultonborough, Hillsboro, Durham, Exeter, Seabrook, Portsmouth, Salem and Somersworth all obtained insurance and benefit products and services from the LGC pursuant to collective bargaining agreements during the relevant period. Id.

4. In the case of most of the relevant CBA's, the NEPBA or its predecessors in interest, negotiated agreements regarding health insurance that required the subject municipality to pay a portion (or, in some cases all) of any premium due to the Respondents on behalf of its members. The

individual members usually also paid a portion of the monies demanded by the Respondents for services or benefits.

5. Because "healthcare was a bargained-for benefit, the whole of the benefit belongs to the employee. This is especially true where salary raised were denied due to the rise in healthcare costs, and the value of the health coverage was considered part of the employment 'package'." Bureau Report dated August 2, 2011 at 18.

6. Accordingly, the NEPBA, as a party to the various collective bargaining agreements and in its representative capacity on behalf of its members, was impacted by, inter alia, the Respondent's failure to conform to applicable law and has a direct interest in the subject matter of this proceeding.

RSA 421-B:26 EXPRESSLY PROVIDES FOR THE PARTICIPATION OF INTERESTED PERSONS AND PARTIES

7. The Respondents claim that intervention by interested parties is not permitted under RSA 421-B:26-a. When interpreting legislative intent, tribunals are to "ascribe the plain and ordinary meanings to words used." In re Guardianship of Williams, 159 N.H. 318, 323 (2009). A reader must "give effect to all words in statute, and presume that the legislature did not enact superfluous or redundant words." State v. Thiel, 160 N.H. 462, 465 (2010) quoting Petition of State of N.H., 159 N.H. 456, 457 (2009). Moreover, "courts do not construe different terms within a statute to embody the same meaning." 2A Sutherland Statutory Construction Sec. 46:6 (7th ed.). Finally, reviewing tribunals must assume that the

legislature "knew and adopted the widely accepted legal definitions of meaning associated with the specific words enshrined in the statute." U.S. v. Coccia, 446 F.3d 233, 242 (2006). Review of the relevant statutory language undermines the Respondent's claim that the interveners may not participate in this proceeding.

8. All hearings for enforcement of violations of RSA 5-B are governed by RSA 421-B:26-a. See RSA 5-B:4-a(VI). RSA 421-B:26-a (V), governs notice to the respondent to a petition and provides as follows:

> Within a reasonable time after receipt of a petition:
>
> (a) The secretary of state may issue an order either denying or granting the petition or granting in part and denying in part. If any part of the petition is granted, the ***respondent*** shall be informed, as part of the hearing notice, of the respondent's right to a hearing. (emphasis added).

9. RSA 421-B:26-a (VI), in turn, makes clear that hearing notice requirements are not limited to respondents, but should also be "prepared in forwarded in a manner which affords ***interested persons*** sufficient opportunity to prepare for an deal with the issues to be considered and decided upon at the hearing." In addition, RSA 421-B:26-a (VIII) provides as follows:

> Each hearing shall be set for a date as soon as practicable after the complaint has been received and reviewed. The hearing shall be scheduled to allow sufficient and reasonable time for the preparation of the case by both the department and ***interested parties***.

Moreover, the statute provides that any motion to continue a hearing must include dates when all "***interested parties***" are available. RSA 421-B:26-a (X)(b).

10. Given the foregoing, the statute expressly contemplates the participation of "interested parties" in these proceedings. First, the plain language of the statute makes clear the interested persons and parties, as opposed to just respondents, are entitled to notice and participation in the hearing. This conclusion is buttressed by the fact that the legislature expressly labeled the parties to whom the petition is directed as "respondent[s]" while at the same time using the term "interested parties" to describe the broader the class of persons who, although not respondents, are expressly entitled to participate in the hearing.

11. The legislature must be presumed to have known and intentionally employed the legal definition of the terms "respondent" and "interested party." A respondent is "the party who answers a bill or other pleading." Barrons Law Dictionary, 3rd Ed. at 417 (1991). The use of the different term "interested parties" throughout the statute must be given effect and clearly contemplates broader group than those who are obliged to respond to the petition. See e.g., In re Wal-Mart Stores, 145 NH 635 (2000)(an official is an "interested party" within the meaning of the statutory prohibition against interested party's participation as a member of workers Compensation Appeals Panel, if, inter alia, he has a pecuniary interest that is capable of demonstration); Black's Law

Dictionary, 3rd Ed. At 1330 (defining "parties in interest" by reference to bankruptcy proceeding as not only general and secured creditors but also "every other party whose pecuniary interest is affected by the proceedings.").

12. The Respondent's contention that the terms "interested party" refers only to the Respondents is thus without merit. Accordingly, the statute, by its express provisions, provides for the participation of interested, non-respondent, parties such as the NEPBA.

THE NEPBA HAS STANDING

13. The Respondent's suggestion that the NEPBA does not have standing in this matter is also without merit. In general, "for a party to have standing, the party must have suffered a legal injury." Libretarian Party of N.H. v. Sec'y of State, 158 N.H. 194, 195 (2008). In addition, a party may have "associational standing" on behalf its members when (1) its members would otherwise have standing to sue in their own right; (2) the interests its seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the requested relief requires participation of the individual members in the lawsuit. United Food and Commercial Workers Union, Local 751 v. Brown Group, Inc., 517 U.S. 544, 555 (1996).

14. Here, the NEPBA has direct standing in that the NEPBA negotiated and is a party to the subject CBA's which required the municipalities to purchase the products and benefits in question in this proceeding. If the allegations in the Petition are true, the subject CBA's an the obligations of

the NEPBA and its members were directly impacted by the Respondent's conduct.

15. In addition, the NEPBA has associational standing because its members otherwise have been injured by the alleged actions of the respondents, the interests it seeks to protect are clearly germane to the NEPBA's representational purpose and individual members are not required for participation herein.

16. As described above, the Bureau has suggested in its August 2 report that the member-employees have an interest in the whole of the benefit and services - and any monies improperly withheld or diverted - procured by municipalities on their behalf. Indeed, very often during the period relevant to these proceedings municipalities did not seriously entertain proposals for increased salaries on the basis that healthcare costs were rising. Moreover, the value of healthcare has been relied upon by municipalities as part of the "employment package" of benefits provided to employees in lieu of salary thereby damaging the NEPBA's ability to negotiate more beneficial contracts.

17. Accordingly, the NEPBA has standing to participate in this proceeding.

THE RESPONDENT'S BASELESS ASSERTIONS REGARDING A PROCEDURAL QUAGMIRE ARE WITHOUT MERIT

18. While at the same time it is has reserved its right to join parties as it deems necessary, the LGC suggests a procedural nightmare will ensue with the inclusion of the proposed interveners. As an initial matter, the LGC should not be allowed to use the fact that it has allegedly injured "tens of thousands" employees (instead of just a few) in order to shut out

interested parties. Put simply, the LGC must take it victims as it finds them and should not be allowed to block participation simply because the swath left by its unlawful conduct is wide.

19. More importantly, the parade of horrors the LGC suggests (multiple new interveners, *ad infinitum* pleadings, inefficient proceedings, etc.) are all baseless conjecture. There is no legitimate basis to conclude that additional parties will or could intervene in this matter at this stage. Nor is there any credible basis to conclude that the addition of the current interveners will undermine the ability of the Respondents to enjoy any Due Process rights to which they are entitled.

20. Moreover, the applicable procedural guidelines set forth especially in RSA 421-B:26-a (XIV) gives the hearing officer broad authority to properly control the hearing and "[t]ake any action in a proceeding necessary to conduct and complete the case …." The hearing officer thus has the authority to address any of the contingencies that the Respondents suggest may ensue by the participation of the interveners in this action.

21. The NEPBA reserves the right to join with the other interveners to this matter for purposes of this response.

Wherefore, the NEPBA respectfully requests that its motion to intervene be <u>GRANTED</u>.

Respectfully submitted,
The New England Police Benevolent Assoc., Inc., IUPA, AFL-CIO
By its lawyer,

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Dated: October 17, 2011

I have served the foregoing on counsel of record by electronic mail this 17th day of October 2011.

/s/ ***Peter J. Perroni, Esq.***