State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF SEABROOK Complainant	:	
v.	:	CASE NO. F-0121:15
SEABROOK PERMANENT FIREFIGHTERS ASSOCIATION, LOCAL 2847, IAFF Respondent	:	DECISION NO. 1999-116 (MOTION TO DISMISS)

APPEARANCES

Representing Town of Seabrook:

Robert D. Ciandella, Esq.

Representing Seabrook Professional Firefighters Local 2847:

John Krupski, Esq.

BACKGROUND

The Town of Seabrook (Town) filed unfair labor practice (ULP) charges against the Seabrook Permanent Firefighters Association, Local 2847, IAFF (Union) on July 15, 1999 alleging violations of RSA 273-A:5 II (a), (f) and (g) due to a breach of contract as the result of the Union's failing to require one of its members to submit his wage claim complaint through the binding arbitration provisions of the collective bargaining agreement (CBA). The Union filed its answer, inclusive of an affirmative defense under the Grievance Article, Section 4, Level 1 of the CBA, on July 30, 1999. This matter then went forward to a pre-hearing conference on August 23, 1999, the results of which are memorialized in Decision No. 1999-088 dated August 31, 1999, to wit, the parties expressed a desire to address the procedural motion concerning jurisdiction before addressing the case on the merits. The Pre-Hearing Conference Memorandum and Order then set a pre-hearing briefing schedule on the motion to dismiss of September 10, 1999 for the Union and September 20, 1999 for the Town, both of which were met

by the parties. The PELRB subsequently heard the parties' oral arguments on the Union's motion to dismiss on October 18, 1999.

FINDINGS OF FACT

1. The Town of Seabrook employs firefighters and other personnel in the operation of its Fire Department and, thus, is a "public employer" within the meaning of RSA 273-A:1 X.

2. The Seabrook Permanent Fire Fighters Association, IAFF 2487, is the duly certified bargaining agent for all permanent full-time employees of the Fire Department exclusive of the chief, deputy chief and secretary.

3. The Town and the Union are parties to a CBA ending March 30, 1998 and continuing thereafter under *status quo* provisions, as verified in item 3 of the complaint and answer. That agreement contains a grievance procedure ending in final and binding arbitration. Level 1 of the grievance procedure provides for screening of potential grievances by the Union, to wit:

> The Union, upon receiving a written and signed petition from an aggrieved employee, shall determine if a grievance exists. If in its opinion no grievance exists, no further action is necessary.

4. On or about April 2, 1999 bargaining unit member Martin J. Janvrin filed a wage claim in Superior Court against the Town, alleging that it had wrongfully withheld or diverted his wages in violation of RSA Chapter 275, more specifically designated as RSA 275:42, 275:43, 275:44, 275:48 and 275:53 in the Union's responsive pleadings. There is no evidence that any portion of Mr. Janvrin's complaint alleges a violation of Chapter RSA 273-A. Likewise, there is no evidence that the Union is a named party or participant in Mr. Janvrin's wage claim against the Town.

DECISION AND ORDER

The Union's Motion to Dismiss is granted. Not only is the Union protected by its right to review and assess the viability of grievances under Level 1 of the grievance procedure, it also has the contractually bargained-for bilateral authority to take "no further

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DECISION AND ORDER

The Union's Motion to Dismiss is granted. Not only is the Union protected by its right to review and assess the viability of grievances under Level 1 of the grievance procedure, it also has the contractually bargained-for bilateral authority to take "no further

action" if it determines that "no grievance exits." This contract provision is also in accordance with public policy inasmuch as neither an outside party, such as a public employer, nor an internal party, such as a bargaining unit member, should have the authority to commit a union to the multi-step process of a grievance procedure when the union determines that the grievance under consideration lacks merit. Otherwise, these outside parties could have their hands in the union's financial pockets, whether for honorable purposes or not. In the meantime, if a union irresponsibly or improperly refuses to process a bona-fide grievance, the aggrieved employee has the potential for relief under a duty of fair representation ULP.

In actuality, the Union's review did not need to progress so far to assess the merits of Mr. Janvrin's complaint because, very simply, he never filed a grievance. Since Janvrin appears, by the pleadings, to have been acting individually, his suit was outside the provisions of the CBA and did not need or require the Union's consent to proceed. This case is appropriate for disposition under the same principles which applied in Seabrook Permanent Fire Fighters Association v. Town of Seabrook, Decision No. 1998-038 (April 23, 1998), also known as the "Fowler case," where we said that he had "elected a remedy in the form of his RSA 275 complaint. We think it inappropriate to transform that complaint into a RSA 273-A:5 complaint without it ever having been plead." There is neither a bona fide unfair labor practice complaint nor a viable cause of action before us. Janvrin is not the Union and the Union is not Janvrin. Janvrin elected a juridical remedy outside the jurisdiction of this board. See also Kevin Collins et al v. City of Manchester, Decision No. 1997-084 (August 21, 1997).

The Union's Motion to Dismiss is GRANTED and the ULP is DISMISSED.

So ordered.

Signed this 27th day of October, 1999

JACK BUCKLEY
Chairman

By unanimous decision. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.