

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**DURHAM PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 2253, IAFF**

Petitioner

and

TOWN OF DURHAM

Respondent

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CASE NO. U-0612:7

DECISION NO. 2000-047

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Durham Professional Firefighters Association, Local 2253, IAFF, AFL-CIO(Complainant) filed unfair labor practice charges on April,2000 pursuant to RSA 273-A:1 XI; RSA273-A: 3; and RSA 273-A:5 I (e), (g), (h), and (i) alleging that the Town of Durham (Respondent) and its agents breached the Collective Bargaining Agreement (CBA) by failing and refusing to bargain mandatory subjects in good faith by making a unilateral change in working conditions by unilaterally implementing a Standard Operating Guideline affecting hours worked and unilaterally creating a requirement that employees execute a new training form obligating them for costs under certain . The Town of Durham first answers that the claim as to hours worked is not timely filed as the Complainant's request to bargain the issue was refused during negotiations more than six (6) months prior to the date of filing. Beyond its procedural assertion, the Respondent answers that its action in setting a maximum number of consecutive hours to be worked by a member is primarily a managerial prerogative related to safety and is the exercise of proper and efficient management rather than solely affecting terms and conditions of work.. The Respondent thereafter asserts that the language of the parties' CBA retains for management all "traditional rights to management and direct the affairs of the Town. Further, the Town answers that since the CBA does not address the consecutive hours issue it is therefore an issue that can be exercised exclusively by management.

The primary relief sought by the Complainant, following a hearing by the PELRB, is the issuance of cease and desist orders to stop both practices and to compel

the Respondent Town to bargain the issues in good faith. The primary relief requested by the Respondent is the denial of both alleged improper practice complaints.

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esquire
For the Respondent: J. Joseph McKittrick, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Is the Complainant's filing of its complaint regarding consecutive hours barred, through operation of RSA-A:6 VII, by being untimely as it was filed greater than six months following the Respondent's rejection of a relevant proposal during previous negotiations?
2. Do the actions of the Respondent in promulgating the SOG on consecutive hours constitute a unilateral decision in breach of the contract in violation of RSA RSA 273-A:5 I (e), (g), (h), and (i)?
3. Is the unilateral issuance of the Request for Training Form obligating the employee for training costs an exercise of exclusive management rights or does it constitute a failure to negotiate terms and conditions of employment in violation of RSA 273-A:1 XI and RSA 273-A:3?

WITNESSES

For the Complainant:

1. Ronald O'Keefe, Fire Chief
2. Larry Best, Association President
3. Jeff Furlong, Association Member
4. Brian Murray, Association Member
5. Ilene Healy, Town Administrator

For the Respondent:

1. Ilene Healy, Town Administrator
2. Ronald O'Keefe, Fire Chief
3. Michael N. Blake, Assistant Chief

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood

that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Collective Bargaining Agreement
2. Relevant correspondence
3. Standard Operating Guidelines, final and draft versions
4. Negotiation Record
5. Time records

For the Respondent:

1. All Correspondence between the parties
2. Various documentation from negotiations
3. Time records

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The representatives indicate that testimony of witnesses is now estimated to be four (4) hours for The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than **July 10, 2000**

DECISION AND PRE-HEARING ORDER

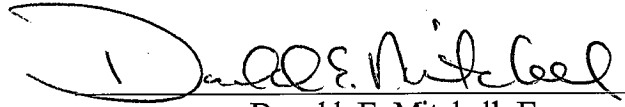
The parties shall submit an original and five copies of an Agreed Statement of Facts to the Board no later than **July 10, 2000**.

The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than **July 10, 2000**. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

Any preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) days prior to the scheduled hearing date.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on **Tuesday, July 25th beginning at 9:30 AM.**

Signed this 12th day of June, 2000.

A handwritten signature in cursive script that reads "Donald E. Mitchell". The signature is written in black ink and is positioned above the printed name and title.

Donald E. Mitchell, Esq.
Hearing Officer