



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 3657
Londonderry Police Department

Complainant

v.

Town of Londonderry

Respondent

Case No. A-0454-22

Decision No. 2001-065

PRE-HEARING DECISION and ORDER

AFSCME Council 93, Local 3657, Londonderry Police Department, (Union) filed unfair labor practice charges on May 17, 2001 pursuant to RSA 273-A: 5 I (e), (g), (h) and (i) alleging that the Town of Londonderry, (Town), breached the parties' collective bargaining agreement (CBA) in failing to comply with the procedures required for treatment of grievances in a timely manner and thereafter failing to grant the grievance in further breach of the provisions of the CBA. The Association requests relief in the form of the Board finding that the Town did commit an improper practice and issuing an order compelling the Town to grant the grievance. In addition, the Union requests that the Town be ordered to publicly post the violation and to reimburse the Union for any and all costs and expenses incurred to pursue this complaint.

The Town of Londonderry, in its answer, essentially asserts that the Union had agreed to an extension of time within which it may answer the grievance and that it had thereafter processed it in a timely fashion. Further, the Town asserts that the parties have agreed that grievances involving the interpretation of the CBA will be brought to binding arbitration and therefore the matter is not properly before the PELRB.

At the Pre-Hearing Conference the Town filed a motion, a copy of which was provided to the Union's counsel that requests a stay of these proceedings until arbitration can be completed.

PARTICIPATING REPRESENTATIVES

For the Complainant: Angela Davidovich, Esq., Associate General Counsel
Steven Lyons, Staff Representative

For the Respondent: Mark Broth, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. PRELIMINARY ISSUE – Whether or not proceedings before the Board on this complaint shall be stayed pending completed arbitration of the issue of whether or not a breach has occurred ?
2. Whether or not an oral extension of time to respond to a grievance was provided to the Town by the Union ?
3. Whether or not a time deadline for a response to a grievance as expressed in the parties' collective bargaining agreement can be extended by a subsequent oral statement granting such an extension?
4. Whether or not the Town violated the provisions of the parties collective bargaining agreement regarding the timely processing of grievances?

STIPULATED FACTS

To be submitted

WITNESSES

For the Complainant: Joseph Maccarone, Union President
Scott Saunders, Union Stewart
Steven D. Lyons, Staff Representative
Richard Heiligenstadt, Grievant
Roy Melnick, former Police Captain

WITNESSES (continued)

For the Respondent: Richard Plante, Town Administrator
Joseph Ryan, Chief of Police
Troy Brown, Director of Administration
Mark Oswald, Town Council Chairman

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

- Joint Exhibits:
1. Certificate of Representation, dated August 1, 1979
 2. Collective Bargaining Agreement, eff. 7/1/98-6/30/01
 3. Grievance of Detective Heiligenstadt, dated 2/1/01
 4. Memo from Detective Saunders to Chief Ryan, dated 1/26/01
 5. Memo from Chief Ryan to Detective Heiligenstadt, dated 2/2/01
 6. Memo from Chief Ryan to Detective Saunders, dated 2/6/01
 7. Memo from Detective Saunders to Town Administrator Plante, dated 2/7/01
 8. Letter from Town Administrator Plante to Detective Saunders, dated 2/16/01
 9. Letter from Town Administrator Plante to Detective Saunders, dated 3/5/01
 10. Letter from Union President Maccarone to Town Administrator Plante, dated 3/8/01
 11. Memo from Troy Brown, Administrative Services Director to Union President Maccarone, dated 3/27/01
 12. Memo from Detective Saunders to Administrative Services Director Brown, dated 3/29/01
 13. Letter from Mark Oswald, Town Council President to Union President Brown, dated 4/5/01
 14. Memo from Detective Saunders to Chief Ryan, dated 4/12/01
 15. Letter from Chairman Oswald to Union President Maccarone, dated 4/20/01

For the Complainant Union: 1. Diagram of Grievance Timeline

For the Respondent Town: None other than those included as Joint Exhibits

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 time being set aside for this hearing is one 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 27, 2001.

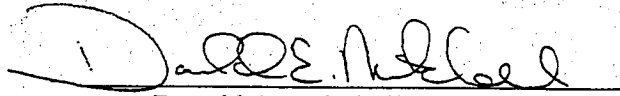
DECISION

1. The Respondent's "Motion for Entry of Order Directing Parties to Proceed with Arbitration" shall be scheduled to be heard on the same scheduled date of, and prior to, the hearing on the merits of Union's complaint. Both parties shall submit a legal memorandum in support of its respective position on this preliminary motion that, if approved, could result in a stay of the present proceedings before the PELRB.
2. After conferring with the Respondent's counsel or representative, the Union's counsel shall draft a numbered list of such relevant and material facts as the parties may agree to, submit the same to the Respondent on or before August 10, 2001 for a concurring signature, and then that jointly executed document shall be filed with the Board by the Respondent no later than August 20, 2001.
3. The parties' representatives shall present the Board with their respective legal memoranda addressing Issue #3, i.e. "Whether or not a time deadline for a response to a grievance as expressed in the parties' collective bargaining agreement can be extended by a subsequent oral statement granting such an extension?"
4. The party representatives shall forward any amendments to their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than August 17, 2000. The party representatives shall meet, or otherwise arrange, to pre-mark any 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. It is to be noted that the proposed list

of Joint Exhibits contained in this order does not coincide with the numeric sequence of the Union's Exhibits attached to its complaint and therefore special attention must be paid when enumerating the Joint Exhibits prior to submission to the Board on the day of the evidentiary hearing

5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
6. 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, August 21 beginning at 9:30 AM.

Signed this 10th day of July, 2001.

A handwritten signature in dark ink, appearing to read "Donald E. Mitchell", is written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer