

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301	*	
Seabrook Supervisory Employees	*	
	*	
	*	
Complainant	*	Case No. M-0592-15
	*	
v.	*	
	*	Decision No. 2001-071
	*	
Town of Seabrook	*	
	*	
Respondent	*	
	*	

PRE-HEARING DECISION and ORDER

BACKGROUND

AFSCME Council 93, Local 2301, Seabrook Supervisory Employees ("Union") filed unfair labor practice charges on June 27, 2001 pursuant to RSA 273-A:5 I (a), (b), (c), and (h) alleging that the Town of Seabrook ("Town") and its agents breached certain provisions of the parties' Collective Bargaining Agreement (CBA) when it unilaterally modified an employee's probationary period and undertook direct communications with the employee in violation of the non-interference, coercion and discriminatory provisions of the statute. The Town answers by generally denying the allegations of the Union and asserts by way of further answer that the Union has breached the CBA by neglecting to follow the grievance procedure contained within the parties' Collective Bargaining Agreement (CBA). Also, the Town asserts as its substantive defense that the actions undertaken by the Town were "approved and accepted" by the probationary employee.

The Union requests relief in the form of a finding that the Town has engaged in an unfair labor practice and requests that the PELRB issue a cease and desist order against the Town prohibiting it from interfering and coercing employees and discussing union business and matters directly with employees who are not Union Officers. The Union also wants the PELRB order to mandate that the Town adhere to the terms of the CBA, respond in writing to the exclusive representative on relevant labor relations issues, publicly post the results of the PELRB decision and reimburse the Union for all costs. For

its part, the Town seeks a dismissal of the Union's complaint, a finding that the Union has breached the CBA by filing its action with the PELRB and for an award of reasonable attorneys' fees and costs

PARTICIPATING REPRESENTATIVES

For the Complainant: Jack McMath, NH Coordinator; Deputy Chief David Currier and Wayne Soini, General Counsel, AFSCME

For the Respondent: Robert D. Ciandella, Esquire

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not under the terms of the parties' Collective Bargaining Agreement, (CBA) the Complainant must complete steps of the Grievance Procedure provision before seeking relief from the Public Employees Labor Relations Board? If so, has the Union committed an unfair labor practice in bringing the instant complaint before the PELRB at this time?
2. Whether or not the Town committed an unfair labor practice through conduct including the reduction of an employee's probationary period?
3. Whether or not the Town committed an unfair labor practice by participating in the alleged direct communication with the probationary employee who is represented by an exclusive representative?

STIPULATED FACTS

1. The Town of Seabrook (Respondent) employs persons to perform municipal and other public functions within its several departments and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The AFSCME Council 93, Local 2301, Seabrook Supervisory Employees (Petitioner) is the duly certified exclusive bargaining representative of a bargaining unit comprised of certain employees of the Respondent Town pursuant to RSA 273-A:10.
3. E. Russell Bailey has been the Town Manager of the Town of Seabrook during all times relevant to this matter.
4. John Starkey is an employee represented by the Petitioner with a hire date in January, 2001. (Specific date to be provided by the Town)
5. The Collective Bargaining Agreement relevant between these parties is effective from April 1, 1998 to March 31, 2001 and contains specific articles

addressing management rights, a probationary period for employees and a grievance process

WITNESSES

For the Complainant:

1. Jack McMath, NH Coordinator, AFSCME
2. David Currier, President, Local 2301

For the Respondent:

1. E. Russell Bailey, Town Manager
2. John Starkey, Public Works Director

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. Collective Bargaining Agreement, effective 4/1/1998 through 3/31/2002
2. Record of the hiring date and termination of probationary status date for John Starkey (To be provided by Town)
3. Minutes of Selectmen's Meeting(s) regarding John Starkey's probationary period (To be provided by Town)

For the Complainant:

1. Correspondence from Union officials to Town Manager
 2. Correspondence from the Town Manager to the Union Officials
- No additional exhibits anticipated other than those included as Joint Exhibits

For the Respondent:

1. All documents submitted by the Complainant

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

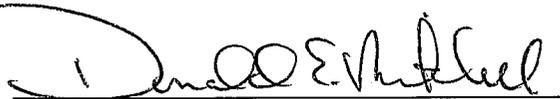
The time being set aside for a hearing of this matter is two hours. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

DECISION AND PRE-HEARING ORDER

1. The Town shall provide a copy of its records reflecting the date of hire and date of the cessation of probationary status of John Starkey and copies of the minutes of Board of Selectmen meetings relating to the probationary period of John Starkey to opposing counsel on or before August 6, 2001.
2. 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 August 17, 2001.
3. The party representatives shall meet, or otherwise arrange, to pre-mark for identification purposes, and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, prior to the scheduled hearing. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
4. Any preliminary, procedural or dispositive motions and supportive memoranda of law shall be filed by the parties no later than August 6, 2001 and delivered conventionally or electronically, by fax or e-mail, on that same date to the opposing party. The opposing party shall file any responsive pleadings and their own memoranda of law no later than August 17, 2001 and likewise expediently deliver a copy of same to the other party on that same day. The Town shall also have leave until August 6, 2001 to file its own separate claim alleging Union conduct constituting an unfair labor practice complaint to be heard at the same scheduled date as appears below.

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 August 23, 2001 **beginning at 9:00 AM.**
Note start time.

Signed this 24th day of July, 2001.



Donald E. Mitchell, Esq.
Hearing Officer