



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301
Seabrook Supervisory Employees

Complainant

v.

Town of Seabrook

Respondent

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Case No. M-0592-16

Decision No. 2001-072

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:4 and RSA 273-A:5 I (a), (b), and (h) alleging that the Town of Seabrook ("Town") and its agents breached the grievance clause of the parties' Collective Bargaining Agreement (CBA) when it did not comply with the so-called "step" procedure by failing to meet with representatives of the exclusive bargaining representative in connection with a grievance of one of its members.

The Town answers by generally denying the allegations of the Union and asserts that it did comply with the grievance procedure and that the instant matter is presently scheduled for arbitration.

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 compelling it to adhere to the grievance procedure and properly hear grievances at the appropriate steps, order the Town to reimburse the Union for its costs associated with bringing this charge and publicly post the PELRB decision. For its part, the Town seeks a dismissal of the Union's complaint and for an award of reasonable attorneys' fees and costs necessary to its defense of this complaint.

This matter is presently in arbitration

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 ISSUE FOR DETERMINATION BY THE BOARD

1. Whether or not the Town committed an unfair labor practice and violated the statutory requirement to provide a workable grievance procedure through conduct including the failure to conduct hearings at the appropriate step in the grievance procedure as contained in the parties' collective bargaining agreement?

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. Russell Bailey has been the Town Manager of the Town of Seabrook during all times relevant to this matter.
4. 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, employee and union rights, medical insurance coverage and a grievance process
5. Diedre Green is an employee of the Town of Seabrook and represented by the Petitioner and filed a grievance (Step II) on 3/19/01 and appealed to Step III by submitting an appropriate grievance form on April 2, 2001.

WITNESSES

For the Complainant:

1. Jack McMath, NH Coordinator, AFSCME
2. David Currier, President, Local 2301
3. Deidre Green, Welfare Administrator

For the Respondent:

1. E. Russell Bailey, Town Manager

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 4/1/98 through 3/31/02
2. Grievance Form 3/19/01
3. Grievance Form 4/02/01
4. Letter from Bailey to Currier, 4/4/01
5. Letter from McMath to Denaco, 4/24/01
6. Letter from Attorney Sioni to Litton, July 5, 2001

For the Complainant:

1. Prescription invoices
2. Medical Insurance provider insurance denial

For the Respondent:

1. Correspondence between the Town and the Union (to be provided by Town)

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

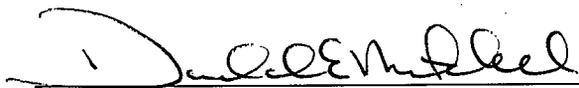
The time being set aside for this matter in conjunction with Case No. M-0592-20 is one half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order

DECISION AND PRE-HEARING ORDER

1. The Union shall provide copies of any relevant invoices, bills, correspondence or other written document regarding the grievant's prescribed medical supplies that form the basis of this charge of unfair labor practice to the Town's representative in this matter on or before August 13, 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 13, 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 24, 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 13, 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.
5. This matter shall be consolidated for purposes of the evidentiary hearing with Case No. M-0592-20.

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 30, 2001 **beginning at 9:30 A.M.**

Signed this 24th day of July, 2001.



Donald E. Mitchell, Esq.
Hearing Officer