



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-0592-17

Decision No. 2001-073

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 (e) alleging that the Town of Seabrook ("Town") and its agents have failed to negotiate in good faith in violation of its statutory duty when it allegedly failed to perform on its representation to address and resolve the issue of upgrading four employee positions which remained open upon the execution of the parties collective bargaining unit and failed to respond to repeated requests by the Union to do so.

The Town answers by generally denying the allegations of the Union and asserts that the parties' collective bargaining agreement requires that the Union's complaint be adjudicated in accordance with the grievance procedure and that by filing the instant complaint, the Union has failed and neglected to follow the grievance procedure. The Town further responds that the Union's complaint is time barred from consideration as an unfair labor practice charge before the PELRB

The Union requests relief in the form of a finding that the Town has failed to negotiate in good faith and an order compelling the Town to complete negotiations of the wage upgrade issue. Also, it seeks an order that the Town publicly post the PELRB order and 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.

PARTICIPATING REPRESENTATIVES

For the Complainant: Jack McMath, NH Coordinator and Wayne Soini, Esquire Regional General Counsel, AFSCME

For the Respondent: Robert D. Ciandella, Esquire and Phillip L. Pettis, Esquire.

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether the acts complained of by the Union occurred prior to six (6) months of the date of the filing of its complaint?
2. Whether or not the Town's conduct in connection with the final negotiations and execution of the parties' collective bargaining agreement, that resulted in no adjustment to the wage rate of four employees violated its obligation to negotiate in good faith thereby constituting an unfair labor practice?
3. Whether or not the Union has committed an unfair labor practice in filing this complaint with the PELRB?

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. Jack McMath was the Union's representative during negotiations of the existing CBA and at all other times relevant to these charges.
5. The Collective Bargaining Agreement relevant between these parties is effective from April 1, 1998 to March 31, 2001.

6. Scott Bartlett, Phil Maltais, Amy Fowler and Jeff Baillageron were at all times relevant to this complaint employees of the Town of Seabrook.

WITNESSES

For the Complainant:

1. Jack McMath, NH Coordinator, AFSCME
2. David Currier, President, Local 2301
3. Jeff Baillageron. employee

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 Exhibit:

1. Collective Bargaining Agreement, effective 4/1/98 through 3/31/02

For the Complainant:

1. Letter from McMath to Bailey, dated January 4, 2001
2. Letter from McMath to Bailey, dated April 10, 2001
3. Letter from McMath to Bailey, dated May 10, 2001

For the Respondent:

1. Letter from McMath to Bailey , dated, May 10, 2001 (with annotations)

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.

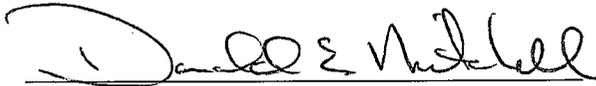
LENGTH OF HEARING

The time being set aside for a 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 party representatives shall confer and each shall provide to the other copies of any and all relevant communications and correspondence in their possession or under their control 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.
5. 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 11:30 AM or the conclusion of Case No. M-0592-15, whichever occurs first.

Signed this 24th day of July, 2001.



Donald E. Mitchell, Esq.
Hearing Officer