



**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-0592-20

Decision No. 2001-076

PRE-HEARING DECISION and ORDER

BACKGROUND

AFSCME Council 93, Local 2301, Seabrook Supervisory Employees ("Union") filed unfair labor practice charges on June 28, 2001 pursuant to RSA 273-A:5 I (a), (b), (d), (g), and (h) alleging that the Town of Seabrook ("Town") and its agents have breached the parties collective bargaining agreement (CBA) and caused the grievance procedure to become unworkable in violation of statutory obligation to have a workable grievance procedure by refusing to meet at any level of the Grievance Procedure in connection with a grievance filed on behalf of David Carrier.

The Town answers by generally denying all specific material allegations of the Union

The Union requests relief first in the form of an immediate cease and desist order ostensibly pending a full hearing on the merits of their claim. However, there is insufficient information provided to the PELRB at this point in time to consider such exigent relief. Then, the Union seeks relief following a hearing on the merits of its complaint in the form of a finding that the Town is to cease and desist from not adhering to a workable grievance process, to comply with the terms of the parties' contract, to conduct a hearing at the Town Manager's level and the Selectmen's level prior to the scheduled arbitration hearing on the underlying grievance and to reimburse the Union for all costs and expenses necessary to bringing this complaint.

For its part, the Town seeks a dismissal of the Union's complaint prior to a hearing for failure to state a claim and for lack of PELRB jurisdiction and, if there is an evidentiary hearing to have the Union complaint denied. It also seeks 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 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 or not the PELRB has jurisdiction over the Union's complaint?
2. Whether or not the Union's complaint states sufficient information upon which an unfair labor practice charge can be based?
3. Whether or not the Town has breached the parties' collective bargaining agreement (CBA) by failing to adhere to the provisions of the Grievance Procedure contained within the parties' collective bargaining agreement through refusal to conduct hearings on this grievance?

### 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 a provision regarding notices of intent to initiate collective bargaining (Article 21.2), and a grievance process.

WITNESSES

For the Complainant:

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

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. Correspondence between the Town and the Union
2. Grievance form

For the Respondent:

1. Correspondence between the Union and the 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

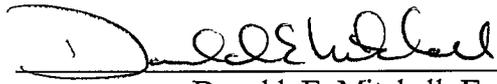
The time being set aside for this matter in conjunction with Case No. M-0592-16 is one half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order

DECISION AND PRE-HEARING ORDER

1. The parties shall exchange copies of any correspondence, grievance forms, or other documents relating to the Union's request to initiate negotiations and the Town's response to any such 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-0592-16

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.

  
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Donald E. Mitchell, Esq.  
Hearing Officer