



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Local 1984 SEIU, State Employees' Association
of NH, Chapter 66, Keene Police Supervisors

Complainant

v.

City of Keene

Respondent

Case No. S-0366-10

City of Keene

Complainant

v.

Local 1984 SEIU, State Employees' Association of
NH, Chapter 66 (Keene Police Supervisors)

Respondent

Case No. S-0366-11

Decision No. 2001-117

PRE-HEARING DECISION and ORDER

BACKGROUND

CASE No. S-0366-10

Local 1984 SEIU, State Employees' Association of NH, Chapter 66, Keene Police Supervisors (hereinafter referred to as the "Union") filed unfair labor practice charges on September 21, 2001 pursuant to RSA 273-A:5 I (h) alleging that the City of Keene (hereinafter referred to as the "City") and its agents have breached the parties collective bargaining agreement (hereinafter referred to as "CBA") by failing to compensate

members of the bargaining unit consistent with the terms of the parties' agreement as expressed in a Memorandum of Agreement, dated October 30, 2000 that modified the terms of the parties' CBA effective July 1, 2000 to June 30, 2003.

The City filed its answer on October 5, 2001 asserting that it has not committed an unfair labor practice by its actions in connection with the instant issue of the amount of the wages to be paid to unit members based upon the application of the October 30, 2000 Memorandum of Agreement. In addition, on October 29, 2001 the City filed a "Motion to Dismiss Unfair Labor Practice Charge" alleging that the PELRB lacks jurisdiction over this matter because the parties' CBA provides for final and binding arbitration of grievances and that this matter was made the subject matter of the parties' grievance process and, indeed, was presented to an arbitrator on October 29, 2001. That arbitration decision is presently pending. The City subsequently filed a supplement to its request for dismissal on October 31, 2001.

On November 7, 2001 the Union filed an amendment to its complaint adding an allegation that the City violated RSA 273-A:5, I(e) because it did not submit all cost items contained within the parties CBA to the City's legislative body, *i.e.* City Council, despite knowing that there would be financial costs requiring approval of the City Council because of the effect the performance bonuses granted to police officers would have on police supervisors' wages. On the day of the Pre-Hearing Conference the City filed an Objection to the Union's Amended Unfair Labor Practice Charge and an Objection to Ex-Parte Communications with PELRB Officials by the Union Representative. The Union filed on that same day a Motion in Limine that was subsequently withdrawn during the Pre-Hearing Conference.

CASE No. S-0366-11

Following the Union's filing of a ULP complaint, the City filed its own ULP complaint on October 10, 2001. The essence of the City's ULP alleges that the Union failed to bargain in good faith and breached the parties' CBA when the Union negotiator repudiated assurances given in mediation, repudiated tentative agreements between the parties, and then pursued a grievance contrary to prior assurances given to the City. Further, the City alleges similar positions in its complaint as it offered as part of its answer to the Union's initial ULP and in its motion to dismiss that ULP that are based upon the existence of a grievance procedure and the pursuit of arbitration of certain wage increase issues. Lastly, the City alleges that the Union negotiator, in representing the interests of supervisors and non-supervisory personnel within the same union, has violated statutory provisions within RSA 273-A:8, II. Such actions undertaken by the Union negotiator are alleged to violate RSA 273-A:5 II (d), (f), and (g).

In its answer filed on October 25, 2001, the Union agrees to the essential chronology of certain events and denies that any repudiation of assurances or other wrongdoing violative of the stated provisions of RSA 273-A:5 II, (d), (f) and (g). The Union also asserts that at all times relevant the matters described in the City's ULP its

negotiator was legally representing the "Supervisory Unit" and not "Police Patrol" and that the City had knowledge of that circumstance.

REQUESTED RELIEF

In both of these consolidated matters, the parties ask that the PELRB issue cease and desist orders prohibiting certain actions of the other and that the opposing party's ULP be denied. The Union further requests that the PELRB order the payment of certain wages to unit members making them "whole" through retroactive application of a wage increase to July 1, 2000.

For its part, the City first seeks a dismissal of the Union's complaint (Case No. S-0366-10) prior to an evidentiary hearing for lack of PELRB jurisdiction and, in the event an evidentiary hearing is conducted, that the PELRB deny the Union's complaint. It also requests that the Union be found to have committed unspecified statutory unfair labor practices within the provisions of RSA 273-A involved with its filing of the original complaint. The City requests an order of the PELRB preventing SEA Chapter 66 from simultaneously representing the police patrol officers' unit and the police supervisors' unit. Finally it seeks an award of reasonable attorneys' fees and costs necessary to its defense of this complaint.

PARTICIPATING REPRESENTATIVES

For the Complainant: William H. McCann, Field Representative, SEIU, SEA-NH
For the Respondent: Thomas J. Flygare, Esq.

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the PELRB has jurisdiction over the Union's complaint?
2. Whether or not the City has breached the parties' collective bargaining agreement (CBA) and the Memorandum of Agreement, dated October 30, 2000 by failing to increase the wage scale of the Union members, *i.e.* police supervisors, following an increase in the wages paid to police officers?
3. Whether or not the Union has committed an unfair labor practice in filing its original unfair labor practice complaint against the City?
4. Whether or not the representation by Chapter 66 of both the police patrol officers and the police supervisors constitutes a statutory violation?

WITNESSES

For the Complainant:

1. Officer Peter Thomas, Steward for Patrol Officers
2. Sgt. Kevin Macie, negotiating team member
3. Officer John Stewart, President of Chapter 66
4. Sgt. Kenneth Meola, negotiating team member
5. Officer Carl Patten, former President of Chapter 66

For the Respondent:

1. John McLean, City Manager
2. Barry Wante, Police Chief
3. Peter Schumway, Human Resource Director
4. Arthur Walker, Capitan

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. Parties' Collective Bargaining Agreement, July 1, 2000 to June 30, 2003
2. Memorandum of Agreement, dated October 31, 2000
3. Wage Scale page of Parties' Collective Bargaining Agreement, July 1, 1997 to 2000
4. Police Patrol Officers' Collective Bargaining Agreement, July 1, 2000 to June 30, 2003
5. Tentative Agreement, dated 1/25/01

For the Complainant:

1. None other than as listed as Joint Exhibits

For the Respondent:

1. Tentative Agreement, dated 11/16/00
2. Grievance Notice, dated 4/23/01
3. City Manager's response to grievance, dated 5/3/01
4. Minutes of meeting, 4/17/01
5. Document entitled "Economic Impact"

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 to be set aside for a consolidated hearing of Case No. S-0366-10 and Case No. S-0366-11 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 twenty (20) days from the date of this Order.

DECISION AND PRE-HEARING ORDER

1. The parties have agreed that these matters may be consolidated for hearing by the PELRB.
2. Both parties shall submit a written memorandum of law in support of their respective positions on the Respondent's Motion to Dismiss, as supplemented, the Union's unfair labor practice complaint, as amended. Issues to be briefed include the jurisdiction of the PELRB to hear the Union's complaint, the timeliness of the filing or failure to file an objection to the Motion to Dismiss by the Union and the timeliness of the Union's filing of its amendment to its original complaint. Said memoranda shall be filed with the PELRB no later than Friday, December 7, 2001 at 4:30 P.M.
3. In light of the particular circumstances presented by Case No. S-0366-10 and Case No. S-0366-11, the Board shall consider the disposition of the Motion to Dismiss and issue its order thereon in advance of the date scheduled for an evidentiary hearing on the consolidated cases.

4. In the event that an evidentiary hearing is to be conducted, it is obvious that while the Union's representative, William H. McCann, has not yet been listed as a witness to be called by either party, his testimony may be requested by the PELRB on the issue of the alleged assurances and repudiations made by him. Therefore, it shall be necessary for the Union to arrange for legal counsel or another representative to conduct its evidentiary case or at least that portion involving Mr. McCann's testimony.
5. The parties have stipulated that there shall be no direct or indirect use of, or reference to, any affidavits, in whole or in part, of any participants, parties or officials involved in any prior proceeding related to the issues presently before the PELRB.
6. The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB at least five (5) calendar days prior to the evidentiary hearing. 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 evidentiary hearing. **(NOTE: The Exhibit numbers appearing within this Order for exhibits already discussed by the parties at the Pre-Hearing Conference have changed to reflect the consolidation of these two cases for hearing.)** Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
6. It is anticipated that the City intends to file a post-hearing brief bearing, *inter alia*, on the issue of the legality of Local 1984 SEIU, State Employees' Association of NH, Chapter 66 representing both the Police Patrol Officers and Police Supervisors. In that event, the Union's post-hearing response brief shall be filed no later than ten (10) days after the submission of the City's post-hearing brief.
7. Any preliminary, procedural or dispositive motions shall be filed by the parties no later than ten (10) days prior to the scheduled hearing date.

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 January 15, 2002 beginning at 9:30 AM.

Signed this 16th day of November, 2001.


Donald E. Mitchell, Esq.
Hearing Officer