

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Seabrook Police Association

Petitioner

and

Town of Seabrook

Respondent

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CASE NO. P-0736-10

DECISION NO. 2001-124

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Seabrook Police Association, (Association) filed unfair labor practice charges on October 10, 2001 pursuant to RSA 273-A:5 I (a), (c), (e), (g), (h) and (i) alleging that the Town of Hampton, (Town), through the actions of its agents unilaterally changed a previously agreed condition of work, namely permanent shift assignments and in undertaking a unilateral action it thereby refused to negotiate in good faith. Further, that said actions amounted to interference with the administration of the Association. The Association's complaint does not request any specific relief.

The Town of Hampton filed its answer in a timely fashion on October 24, 2001. The Town denies most all of the material facts alleged in the Association's complaint as they relate to the formation, effect and duration of a so-called "side bar" relating to the assignment of permanent shifts. It requests the PELRB to dismiss the Association's complaint and to award the Town its reasonable attorney's fees. In addition, the Town raises a specific defense that the Association's complaint constitutes a violation of the parties' collective bargaining agreement (CBA) that requires that it be adjudicated pursuant to the grievance procedure contained in the CBA.

PARTICIPATING REPRESENTATIVES

For the Complainant: J. Joseph McKittrick, Esq.

For the Respondent: Robert M. Derosier, Esquire
Robert D. Ciandella, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the PELRB has jurisdiction to hear the Association's complaint?
2. Whether or not the Town's actions in connection with any modification or "side bar" to the parties collective bargaining agreement or in its implementation of any related shift policy constitute a unilateral change in working conditions, a failure or refusal to bargain, or interference with the administration of the Association?

WITNESSES

For the Complainant:

1. Jason Allen, President of the Association
2. Michael Frost, negotiating team member
3. David Currier, Deputy Police Chief
4. Mark Preston, Past President

For the Respondent:

1. Paul J. Cronin, Police Chief
2. 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, April 1, 1998 to March 31, 2002

For the Complainant Union:

1. Negotiation documents related to the 1998 CBA
2. Memorandum from Michael Frost to Bailey, dated September 10, 2001
 - a. Attachment A
 - b. Attachment B
3. Association's Demand to Bargain, September 25, 2001

For the Respondent Town:

1. Correspondence to be identified and exchanged

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

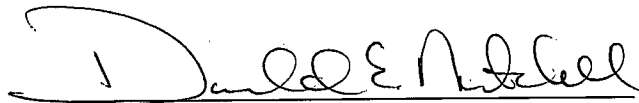
The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than December 14, 2000.

DECISION

1. The parties shall file a Memorandum of Law to support their respective position on Issue # 1, *i.e.* the jurisdictional issue on or before January 24, 2002.
2. The parties shall exchange any outstanding documents, including correspondence and negotiation notes no later than January 28, 2002.
3. The party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than Friday, February 1, 2002. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
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 Thursday, February 7, 2002 beginning at 9:30 A.M.

Signed this 29th day of November, 2001

A handwritten signature in dark ink, appearing to read "Donald E. Mitchell", is written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer