



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Brotherhood of Police Officers,
Local 314

Complainant

v.

City of Somersworth

Respondent

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Case No. P-0705-14

Decision No. 2003-053

PRE-HEARING DECISION and ORDER

The IBPO Local 314, (hereinafter referred to as the "Union") filed unfair labor practice charges and a Petition for Interim Relief on April 14, 2003 alleging that the City of Somersworth, (hereinafter referred to as the "City"), acting through its agents undertook certain actions affecting the Union's president. The Union alleges that the City reduced his pay grade following actions he initiated resulting in prior proceedings before the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") relating to claims of unfair practices by the City and the decisions issued in those proceedings by the PELRB. Further, the Union alleges that the reduction in the Union president's pay was undertaken by the City in retaliation for his actions in initiating, approving and participating in those earlier proceedings. Also, the Union alleges that the City made the reduction in pay without negotiating the change in his wage prior to implementing it. The City's actions are alleged to amount to discriminatory conduct in violation of RSA 273-A:5 I (a), (c), (d), (g) and (h) and a failure to bargain in good faith in violation of RSA 273-A:5 I (a), (e), (g) and (h).

The Union requested immediate relief in the form of an interim cease and desist order against the City preventing the reduction in wages. The Union also requests that the

PELRB find that the City has committed unfair labor practices and order the City to negotiate any proposed change in pay.

The City of Somersworth filed its answer to the Union's Complaint and Objection to the Union's Petition for Interim Relief with the PELRB on April 14, 2003. The City first questions the PELRB's jurisdiction to hear the charges brought by the Union in asserting that the dispute raises an issue involving an interpretation of the parties' collective bargaining agreement (CBA). As such, the City contends that the matter is subject to the parties' grievance procedure and is not properly before the PELRB and that it should dismiss the complaint. Beyond the jurisdictional issue, and aside from an apparent typographical error involving the year in which the previous complaint appearing in the original complaint filed with the PELRB, the City agrees with the chronology of events alleged by the Union. However, the City denies that it reassigned the Union president, with a consequent reduction in the pay he had been receiving, and denies any action is in retaliation for earlier complaints presented to the PELRB by the Union. It also denies that it had any obligation to bargain with the Union over the reassignment or the reduction in pay that resulted.

The City requests that the PELRB deny the Union's request for interim relief because there is neither the requirement of irreparable harm nor any other element of damage contained in N.H. Admin R. Pub 304.02 is present; dismiss the Union complaint for lack of jurisdiction; or, if the matter proceeds to the merits, deny the Union's complaint.

PARTICIPATING REPRESENTATIVES

For the Complainant: Peter C. Phillips, Esq., IBPO Counsel

For the Respondent: Mark T. Broth, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Does the PELRB have jurisdiction to hear the Union's complaint?
2. Whether the actions undertaken by the City, as alleged in the Union's complaint, constitute a retaliatory action amounting to discrimination in violation of RSA 273-A:5 I (a), (c), (d), (g) and (h)?
3. Whether the actions undertaken by the City, as alleged in the Union's complaint, constitute a failure to negotiate in good faith in violation of RSA 273-A:5 I (a), (c), (d), (g) and (h).

WITNESSES

For the Complainant:

1. William Lemoi
2. John Centola

For the Respondent:

1. Dean Crombie, Chief
2. Douglas R. Eliot, City Manager
3. William Wardwell, Labor Relations Consultant

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

For the Complainant Union:

1. Letter from Lemoi to Crombie, dated April 8, 2003
2. PELRB Decision No. 2002-148
3. PELRB Decision No. 2003-024
4. Transcript of PELRB hearing in Case No. P-0705-13 held on 12/5/02

For the Respondent City:

1. Collective Bargaining Agreement, dated June 2000
2. PELRB Decision No. 2002-148
3. Negotiation session notes of William Wardwell

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 at least twenty (20) days prior to the date of the evidentiary hearing.

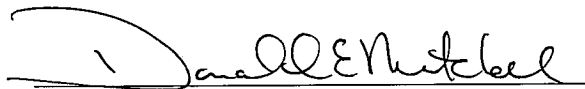
DECISION

After discussion between the parties' representatives and with the Hearing Officer, the parties have agreed and executed stipulations that are hereby incorporated in this order as paragraphs #1 through #5, below.

1. The Union will, within 10 (ten) days of this stipulation, file a grievance concerning the City's reduction of Officer Lemoi's rate of pay. Said grievance may be in the form of a "request for appointment of arbitrator" form filed with the PELRB.
2. The City agrees that said grievance may proceed directly to arbitration without first exhausting the grievance process set forth in the parties' collective bargaining agreement.
3. The City agrees to waive any issues of procedural arbitrability with regard to said grievance.
4. The parties agree that PELRB proceedings in Case No. P-0705-14 shall be held in abeyance pending the issuance of the arbitrator's award.
5. Within 30 days of its receipt, the parties shall provide a copy of the arbitrator's award to the PELRB and shall advise the PELRB, in writing, whether either party requests that Case No. P-0705-14 be brought forward.
6. In the event that neither party files a request for hearing with the PELRB within thirty (30) days of its receipt of the arbitrator's award, this matter shall be administratively dismissed and removed from the PELRB's calendar.
7. In the event that it becomes necessary to schedule a hearing before the PELRB, 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 at least five (5) days prior to the scheduled hearing. 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.

8. The parties shall meet and confer to compile a report, by chart or narrative expressing their respective computation of damages in the form of lost wages and other compensation and submit the same as one of its exhibits at the hearing.
9. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than twenty (20) calendar days prior to the scheduled hearing date.

Signed this 28th day of May, 2003.



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:

Peter C. Phillips, Esq.
Mark T. Broth, Esq.