



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Durham Professional Firefighters Association,
Local 2253, IAFF, AFL-CIO, CLC

- Complainant

v.

Town of Durham

Respondent

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Case No: U-0621-11

Decision No. 2003-127

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Durham Professional Firefighters Association, Local 2253, IAFF (hereinafter "the Union") filed an unfair labor practice complaint on August 13, 2003 alleging that the Town of Durham (hereinafter "the Town") committed an unfair labor practice when it engaged in regressive bargaining. More specifically, the Union claims that the Town violated RSA 273-A:5 I (e), (g), (h), (i) and RSA 273-A:3 it informed the Union, by a letter dated February 21, 2003 from Town counsel, that it would not entertain retroactivity for wages in contract years 2002 or 2003. The letter from Town counsel followed an unsuccessful mediation session between the parties that occurred on February 20, 2003. The Union requests, among other things, that the PELRB find that the Town has committed an unfair labor practice by engaging in regressive bargaining and that it order the Town to cease and desist from further conduct in this regard.

The Town denied the Union's charge in its answer filed on August 26, 2003, asserting, *inter alia*, that the Union's allegations regarding the February 21, 2003 letter were a gross and deliberate misreading of said document. The Town alleges that it had raised the issue of retroactivity early in the negotiation process after the Union's affirmative statement that it would not agree to a contract with insurance co-payments and that there is no violation of the law when a party maintains a position that it held prior to mediation. Moreover, it contends that the Union's charge violates the "essence" of mediation by attempting to require the PELRB to enforce positions taken in mediation by a party or parties. The Town requests that the PELRB dismiss the Union's charge as facially insufficient, sanction the Union for filing the complaint, and order such other relief as it deems just.

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esq.

For the Respondent: J. Joseph McKittrick, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

(1) Does the Union's unfair labor practice charge state a claim upon which relief can be granted?

(2) Did the Town engage in regressive bargaining, in violation of RSA 273-A:5 I (e), (g), (h), (i) and/or RSA 273-A:3, by virtue of its February 21, 2003 letter to Union counsel?

WITNESSES

For the Complainant:

1. Larry Best, Pres., Local 2253, IAFF
2. Dick Stevens, Member, Bargaining Team, Local 2253, IAFF
3. Brian Murray, Member, Bargaining Team, Local 2253, IAFF
4. Jeff Furlong, Vice-Pres., Local 2253, IAFF

For the Respondent:

1. Todd Selig, Town Administrator
2. Fire Chief Ron O'Keefe
3. Paul Beaudoin, Town Budget Manager
4. Asst. Fire Chief Michael Blake

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 with 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, 1999-2001.
2. Negotiation ground rules

For the Union:

1. Mediation pleadings
2. 2/21/03 letter

For the Town:

1. Bargaining Notes

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 with 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 understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is one-half day. If either party believes that 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

1. The parties' representatives shall meet, or otherwise confer, on or before **December 23, 2003**, in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. 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.
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held at **9:30 AM on January 22, 2004** at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 29th day of October, 2003.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

John S. Krupski, Esq.
Joseph McKittrick, Esq.