



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 1801/Derry Public Works	*	
	*	
	*	
Complainant	*	
	*	Case No: A-0413-35
v.	*	
	*	Decision No. 2004-160
Town of Derry	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 1801/Derry Public Works (hereinafter "the Union") filed an unfair labor practice complaint on August 31, 2004 alleging that the Town of Derry (hereinafter "the Town") committed unfair labor practices in violation of RSA 273-A:5 I (e), (g), (h) and (i), as well as RSA 273-A:4, by failing to properly implement the results of an arbitration award. More specifically, the Union states that an arbitration award was issued on December 2, 2002 that sustained the grievance of Ronald Faverty relative to his loss of long-term disability retirement benefits (re: Article 14.6 of the parties' CBA). It argues that since this decision constitutes a binding interpretation of contract language, the Town is obligated to apply its precedent to other similarly effected employees, namely Ralph Leone, Frederick Hooley, and Al Hayward. However, in a July 28, 2004 letter from the Town's Director of Human Resources & Administration to the Union's Staff Representative, the Union was notified that its' "request that the Faverty arbitration decision be applied retroactively is respectfully denied." The Union therefore contends that the Town has willfully and without good cause failed to compensate Mr. Leone, Mr. Hooley, and Mr. Hayward in conformity with the arbitrator's award, and, in so doing, violated RSA 273-A:5 and RSA 273-A:4.

As remedies, the Union requests that the PELRB (1) determine that the Town has committed an improper labor practice; (2) order the Town to cease and desist such acts in violation of RSA 273-A:5 I (e), (g), (h) and (i); (3) order the Town to pay amounts due pursuant to the Arbitrator' award with interest, at the statutorily permissible rate, to Mr. Leone, Mr. Hooley and Mr. Hayward, as of the date of the arbitrator's award; (4) order

the Town to abide by the mutually agreed upon language in the collective bargaining agreement regarding binding arbitration; (5) order the Town to bargain in good faith, and (6) grant such other relief as its deems just and equitable.

The Town filed its answer denying the Union's charge on September 15, 2004. While the Town generally admits to the factual chronology as described in the Union's complaint, it denies that it has committed any improper labor practice. By way of further answer, it states that the Union's complaint seeks to expand the scope of the arbitrator's award so that it may be applied to other individuals who were not parties to the original grievance. The Town argues that the Union, in a blatant attempt to avoid timeliness issues as to the other employee's claims, is attempting to "bootstrap" them onto the Faverty arbitration decision. In this regard, the Town asserts that the PELRB lacks the requisite authority and jurisdiction to expand the scope and applicability of the arbitrator's award. Accordingly, the Town requests that the PELRB (1) deny the relief sought in the Union's unfair labor practice charge, (2) dismiss the instant improper practice charge and (3) grant such other relief as justice may require.

A pre-hearing conference before the undersigned Hearing Officer, and with counsel present on behalf of both parties, was conducted on September 27, 2004 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the Town: Mark T. Broth, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Is the instant matter within the PELRB's jurisdiction and authority?
- (2) If so, has the Town failed to implement the arbitrator's award or otherwise failed to comply with the parties' mutually agreed upon grievance and arbitration procedure in violation of RSA 273-A:5 I (e), (g), (h) and/or (i)?

WITNESSES

For the Union:

1. Steven Lyons, AFSCME
2. Ronald Faverty
3. Ralph Leone
4. Frederick Hooley
5. Al Haywood

For the Town:

1. Russell Marcoux
2. Howard Tawney
3. Steven Lyons, AFSCME
4. William Wardwell

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. Arbitration Award issued by Michael C. Ryan, dated December 2, 2002
2. Copy of Certification issued by the NH PELRB
3. Collective Bargaining Agreement, ending June 30, 2004
4. Letter addressed to Steve Lyons, from Atty. Broth, dated March 25, 2003
5. Letter addressed to Atty. Broth, from Atty. Cocuzzo, dated April 15, 2003.
6. Letter addressed to Atty. Cocuzzo, from Atty. Broth, dated July 9, 2003
7. Letter addressed to Atty. Broth, from Atty. Cocuzzo, dated August 5, 2003.
8. Letter addressed to Atty. Broth, from Atty. Cocuzzo dated August 26, 2003.
9. Letter addressed to Atty. Broth & Atty. Cocuzzo, from Michael Ryan, dated November 19, 2003.
10. Letter addressed to Atty. Broth & Atty. Cocuzzo, from Michael Ryan, dated November 25, 2003.
11. Letter addressed to Howard Tawney, from Steve Lyons, dated April 22, 2004.
12. Summary of retroactivity and ongoing LTD related cost obligation.
13. Copy of Check No. 210188 issued to Frederic Hooley from Integrated Disability Resources and benefit description sheet.
14. Letter addressed to Howard Tawney, from Steve Lyons, dated July 13, 2004.
15. Letter addressed to Steve Lyons, from Howard Tawney, dated July 28, 2004.
16. Faverty grievance documents.

For the Union:

None other than those marked as joint.

For the Town:

None other than those marked as joint.

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 set aside for this hearing will be one-half (½) 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 **October 1, 2004**, in attempt to reach a stipulation on presenting the instant case by ~~written submission, or, in the alternative, without the need for formal testimony.~~ In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
2. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before **October 27, 2004** 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 the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.
3. 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.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

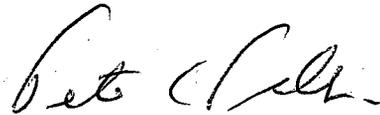
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

November 16, 2004 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 29th day of September, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Katherine M. McClure, Esq.

Mark T. Broth, Esq.