



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Teamsters Local 633 of NH/Newmarket Police  
Association

Complainant

v.

Town of Newmarket

Respondent

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Case No: P-0766-2

Decision No. 2004-189

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

The Teamsters Local 633 of New Hampshire/Newmarket Police Association (hereinafter "the Union") filed an unfair labor practice complaint on October 25, 2004 alleging that the Town of Newmarket (hereinafter "the Town") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), and (i) when it refused to implement an increase in the police detail rate effective July 1, 2004 and, later, by its conduct during a meeting held on October 14, 2004. The Union indicates that it filed a petition for certification with the PELRB in mid-July of 2004, after cost of living pay increases had been approved and implemented by the Town. However, as averred by the Union, the Town did not similarly adjust the outside detail rate from \$27.50 to \$30.00 per hour, which, it maintains, had been approved by the Town in its 2004-2005 fiscal year budget.

The Union attaches to its complaint a letter dated October 8, 2004, wherein Tara Tucker, on behalf of the pending union, requested of the Town Administrator, Alphonse Dixon, that the outside detail rate be immediately increased to \$30.00 per hour. In a letter dated October 13, 2004, also attached to the complaint, Mr. Dixon denied the pending union's request. The Union further alleges that at a meeting held on October 14, 2004 with Ms. Tucker, Mr. Dixon went on to discuss an increase in medical costs, no scheduled wage increases and non-inclusion in a new pay classification study for employees in prospective union. The Union describes Mr. Dixon's conduct in this regard as unlawful coercion under RSA 273-A. Based upon its failure to adjust the outside detail rate and its conduct during the October 14<sup>th</sup> meeting, the Union asserts that the Town has committed unfair labor practices. As remedies, the Union requests that the PELRB issue an immediate cease and desist order against the Town and that police personnel be properly compensated in accordance with the adjusted detail rate as approved by the Town.

The Town filed its answer denying the Union's charge on November 8, 2004. The Town specifically denies that it violated the provisions of RSA 273-A:5 (a), (b), (c), (i) or any other provision of the statute. While the Town admits that the proposed Town budget was adopted at its Annual Meeting, which happened to contain, among a myriad of other items, an increase in the police officers' private duty rate, said increase was not a separate line item or located in a separate warrant article. The Town avers that increases in private duty detail rates have not historically been implemented automatically but are, and have been, subject to certain administrative procedures prior to implementation and that such administrative procedures had not occurred prior to the Union filing for an election. In order to maintain the required *status quo* after it was notified of the Union's representation petition, the Town states that it did not implement or change in any way the private detail rate for police officers.

As to the October 14<sup>th</sup> meeting, the Town admits that a meeting was held on that date, but further states it was convened at the invitation of Ms. Tucker in her letter of October 8, 2004. The Town admits that Mr. Dixon, on behalf of the Town, discussed his belief that that he was not able to implement various changes in wages, including the detail rate, during the so-called *status quo* period and that said changes would have to await collective bargaining between the parties. The Town further admits that an increase in medical insurance contributions was discussed, but denies that said conversation was, or was intended to be, coercive or intimidating. It states that under a current Town personnel policy, employees contribute a certain percentage toward the total health insurance premium, and that based upon increases in health insurance premiums as of July 1, 2004, employees would be paying an increased dollar amount, but no increase in the percentage of the premium. The Town maintains that neither it nor Mr. Dixon had any illegal intent, either when he determined the Law prevented him from implementing an increase in private duty detail pay during the status quo period or when he agreed to meet with Ms. Tucker. Accordingly, the Town requests that the Union's improper practice charge be dismissed.

A pre-hearing conference was conducted on December 1, 2004 at PELRB offices before the undersigned hearing officer.

#### PARTICIPATING REPRESENTATIVES

For the Union: Thomas D. Noonan, Business Agent

For the Town: J. Joseph McKittrick, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

- (1) Did the Town commit an unfair labor practice in violation of RSA 273-A:5 (a), (b), (c), and/or (i), by not adjusting the police department's outside detail rate effective July 1, 2004?

If so, what shall be the remedy?

- (2) Did the Town, in meeting with Corporal Tucker on October 14, 2004 and based upon its statements/conduct during said meeting, intend to dominate or interfere in the formation of a union, in violation of RSA 273-A:5 (a), (b), (c), and/or (i)?

If so, what shall be the remedy?

#### WITNESSES

For the Union:

1. Corporal Tara Tucker
2. Chief of Police Rodney Collins

For the Town:

1. Alphonse R. Dixon, Town Administrator
2. Captain Kevin Cyr

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. Letter addressed to Tara Tucker 10/8/04
2. Letter addressed to Alphonse R. Dixon 10/13/04

For the Union:

None other than those marked as joint.

For the Town:

1. Relevant portions of Police Department Budget.
2. History of detail increases.
3. Procedural documents regarding implementation.

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 **December 28, 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 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 opposing 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.
4. 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:

**Thursday, January 13, 2005 at 9:30 AM**

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

So ordered.

Signed this 2<sup>nd</sup> day of December, 2004.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Thomas D. Noonan, Business Agent  
J. Joseph McKittrick, Esq.