



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657, Windham Police Department	*	
Employees	*	
	*	Case No: P-0789-1
Complainant	*	
v.	*	Decision No. 2006-190
	*	
Town of Windham	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 3657, Windham Police Department Employees (hereinafter “the Union”) filed an unfair labor practice complaint on August 9, 2006 alleging that the Town of Windham (hereinafter “the Town”) committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i), by failing to bargain in good faith when it refused to impact bargain a new traffic assignment.

The Union requests that the PELRB (1) determine that the Town has committed an improper labor practice by failing to bargain in good faith; (2) order the Town bargain in good faith; (3) order the Town to publicly post the findings of the Board for thirty (30) business days; (4) order the Town to reimburse the Union for any and all costs and expenses incurred; and (5) Grant such other relief as the Board deems just and equitable.

The Town filed its answer denying the Union’s charge on August 23, 2006. The Town asserts that the Union did not sufficiently identify the subject matter of proposed impact bargaining and that Chief Lewis believed the Union wished to impact bargain the establishment of a new assignment. The Town asserts that the establishment of a new assignment is a matter of managerial prerogative, but that the Town is willing to negotiate other terms and conditions of employment concerning the new assignment.

Accordingly, the Town requests that the PELRB (1) dismiss the instant Unfair Labor Practice Charge; (2) deny all relief requested by the Union; (3) award the Town its costs, including reasonable attorney’s fees; and (4) order such other relief as the Board deems just and equitable.

The undersigned Hearing Officer conducted an informal pre-hearing conference on October 23, 2006 at the PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Steven D. Lyons, Esq.

For the Town: Mark T. Broth, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Has the District failed to bargain in good faith or otherwise failed to comply with the parties' mutually agreed upon CBA in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i)?

WITNESSES

For the Union: (None, no pre-hearing worksheet)

For the City:

1. David Sullivan, Town Administrator
2. Gerald Lewis, Chief of Police

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. Collective Bargaining Agreement 4/1/04-3/31/06
2. Memorandum from Chief Lewis dated 2/14/06
3. Correspondence from AFSCME Chapter 11 Chair, Edward Fedele dated 2/26/06
4. Memorandum from Chief Lewis dated 3/7/06
5. Memorandum from AFSCME Chapter 11 Chair, Edward Fedele dated 3/7/06

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. Immediately prior to the conference the parties engaged in discussions and it appears this matter may be resolved shortly on the basis of these discussions. The parties shall notify the PELRB immediately of any such final resolution.
2. The parties' representatives shall meet, or otherwise confer, on or before November 10, 2006 and 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.
3. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before November 10, 2006 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.
4. 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.

5. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

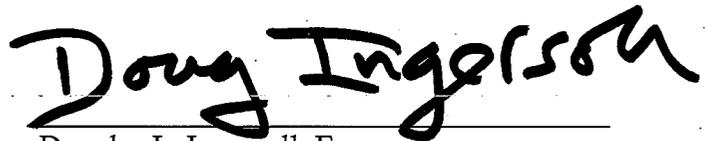
6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

November 28, 2006 @ 9:30 AM

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

So ordered.

Signed this 23rd day of October, 2006.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Steven D. Lyons, Esq.

Joseph DeLorey, Esq.

Mark T. Broth, Esq.