



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657, Chapter 11, Windham Police
Department Employees

Complainant

v.

Town of Windham

Respondent

Case No. P-0789-2

Decision No. 2008-018

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On November 30, 2007, AFSCME Local 3657, Chapter 11, Windham Police Department Employees ("Union") filed a complaint alleging that the Town of Windham violated RSA 273-A:4 and RSA 273-A:5, I (b), (e), (g), (h), and (i) by failing to bargain in good faith because of its unilateral implementation of terms and conditions of employment and its failure to recognize the Union as the exclusive representative. The Union complains that the Chief of Police's April 20, 2007 policy for filling details and overtime shifts violates the parties' April 1, 2004 to March 31, 2006 collective bargaining agreement ("2004 to 2006 CBA"). As a result, the Union claims Officer Malisos suffered the improper loss of "earned time." Additionally, the Union contends that the Chief's October 26, 2007 patrol staffing policy changing existing staffing standards was undertaken without prior notice to the Union and without any opportunity for the Union to bargain with the Town over the alterations to the staffing policy.

As remedies, the Union requests that the PELRB 1) find that the Town has failed to bargain in good faith; 2) order the Town to cease and desist dominating and interfering with the employee organization; 3) order the Town to bargain in good faith; 4) order the Town to publicly post the findings of the PELRB for 30 business days; 5) order the Town to make Officer Malisos whole; and 6) order the Town to make the Union whole for any and all costs.

On December 14, 2007 the Town filed its answer denying the charges. The Town asserts that the Chief's actions represent the proper exercise of management rights and denies any violation of RSA 273-A:5, I and the Union's claims should be resolved through arbitration.

Accordingly, the Town requests that the PELRB: 1) dismiss the complaint; and 2) grant such other relief as justice may require.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on January 30, 2008.

PARTICIPATING REPRESENTATIVES

For the Union: Karen Clemens, Esq.

For the Town: Karen Levchuk, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union's claims are arbitrable.
2. Whether the Town's actions constitute an improper unilateral implementation of terms and conditions of employment, a failure to bargain in good faith, and a failure to recognize the Union as the exclusive representative in violation of RSA 273-A:4 and RSA 273-A:5, I (b), (e), (g), (h), and (i).

WITNESSES

For the Union:

1. Steve Lyons, AFSCME Staff Representative
2. Sergeant Mark Caron, Chapter President
3. Patrol Officer Greg Malisos
4. Retired Officer Stephen Moltenbury, contract negotiator

For the Town:

1. Gerald Lewis, Chief of Police
2. Pat Yaskevitch, Captain
3. Any witnesses named by the Union.

All 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.

EXHIBITS

For the Union:

1. Collective Bargaining Agreement, effective April 1, 2004 – March 31, 2006
2. Detail/Overtime Policy, dated April 20, 2007
3. Partial Staffing Notice, dated October 26, 2007
4. Negotiations Proposal, dated November 4, 2005
5. Letter from Town Administrator, dated September 18, 2007
6. Police Union Tentative Agreement for the period of 2006-2010
7. Other documents as discovered.

For the Town:

1. Collective Bargaining Agreement, effective April 1, 2004 – March 31, 2006
2. Memorandum, dated December 22, 2005
3. Memorandum, dated March 7, 2006
4. Memorandum, dated March 9, 2006
5. Memorandum, dated March 14, 2006
6. Memorandum, dated March 17, 2006
7. Memorandum, dated March 26, 2006
8. Memorandum, dated March 27, 2006
9. Detail/Overtime Policy, dated April 20, 2007
10. Memorandum, dated June 4, 2007
11. Partial Staffing Notice, dated October 26, 2007
12. Any documents listed by the Union.

All 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 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 3 hours. 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 20 days prior to the date of the evidentiary hearing.

DECISION

1. The Town's assented to motion to continue is granted. At the pre-hearing counsel confirmed that the parties are available for hearing on March 13, 2008.

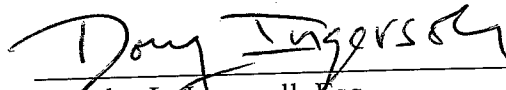
2. The parties' representatives shall exchange documents referenced in the parties' respective Pre-Hearing Worksheets no later than February 5, 2008.
3. The Union shall file an amended and restated complaint setting forth in greater detail the underlying factual basis for its charge by February 11, 2008.
4. The Town shall file any answer to the Union's amended complaint by February 22, 2008.
5. The parties' representatives shall meet, or otherwise confer, by February 25, 2008 and attempt to stipulate to the submission of this case in writing or, in the alternative, without the need for formal testimony. The parties shall file a joint statement setting forth any such agreement and include a proposed schedule for the parties' filings by February 25, 2008.
6. If the matter is to proceed to hearing, counsel shall meet, or otherwise confer, by March 7, 2008 in order to agree on joint exhibits and to compose a mutual statement of agreed facts. The parties' shall file all joint exhibits, factual stipulations, and other exhibits properly marked for identification by March 7, 2008.
7. Counsel shall file any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, at least 5 days prior to the scheduled hearing date.
8. The parties shall file any motions by February 29, 2008, and any responses or objections thereto shall be filed by March 7, 2008.
9. 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:

March 13, 2008 @ 9:30 a.m.

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

So ordered.

January 31, 2008.


Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Karen Clemens, Esq.
Karen Levchuk, Esq.
Mark T. Broth, Esq.