



STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657, Milford Police Employees		*	
	Complainant	*	Case No. P-0797-3
	v.	*	
Town of Milford		*	Decision No. 2008-152
	Respondent	*	
		*	

APPEARANCES

Representing AFSCME Local 3657, Milford Police Employees:

Erin L. Goodwin, Esq.  
Associate General Counsel, AFSCME Council 93, Boston, Massachusetts

Representing Town of Milford:

Warren Atlas, Esq.  
Atlas & Atlas, P.C., Bedford, Massachusetts

BACKGROUND

AFSCME Local 3657, Milford Police Employees (the "union") filed an unfair labor practice complaint on February 21, 2008 alleging that on January 9, 2008 the town, acting through Police Chief Douglas, improperly informed bargaining unit members that according to PELRB Decision No. 2007-183, issued January 4, 2008, sergeants were "out of the union effective January 4, 2008." The union contends that the town's actions in meeting with a bargaining unit member individually, unilaterally excluding sergeants from the bargaining unit,

refusing to recognize the union as the exclusive representative of the sergeants and refusing to comply with the board's order (PELRB Decision No. 2007-183) constitutes an unfair labor practice. The union also claims the town has restrained, coerced or otherwise interfered with the employees in the exercise of their rights and with the administration of the employee organization. The union claims the town's actions constitute a violation of RSA 273-A:5 I (a), (b), (e), (g) and (i).

As remedies, the union requests that the PELRB: 1) find that the town violated RSA 273-A:5 I, (a), (b), (e) (g) and (i); 2) order the town to cease and desist from dealing directly with individual employees regarding the terms and conditions of employment; 3) in order to prevent irreparable harm, issue a cease and desist order under RSA 273-A:6, III pending a hearing under ~~Pub 201-05 preventing the town from refusing to recognize the union as the exclusive~~ representative of the sergeants and ordering the town to comply with PELRB Decision No. 2007-183; 4) order the town to recognize the union as the exclusive representative of the effected employees; 5) find that the town has interfered with the administration of the employee organization; 6) find that the town has restrained coerced or otherwise interfered with the employees in the exercise of their rights; 7) order the town to publicly post the findings of the board for 30 business days; 8) order the town to make the union whole for any and all costs and expenses incurred to pursue the prohibited practice charge; and 9) order any and all other relief as the board deems necessary and appropriate.

On March 7, 2008 the town filed its answer denying the union's unfair labor practice charge. The town asserts that it acted properly and that the issues raised by in the complaint are already pending in the town's Petition for Declaratory Ruling, PELRB Case No. P-0797-2. The town requests that the PELRB: 1) dismiss the complaint because the union failed to state a claim

under RSA 273-A and because the issues pending are already before the board; and 2) deny the union's prayers for relief as lacking in substance on the merits and without a proper basis in law or fact.

The undersigned Hearing Officer conducted a hearing on the complaint on May 21, 2008 at the offices of the Public Employee Labor Relations Board in Concord, at which time the parties had a full opportunity to be heard, to examine and cross-examine witnesses and offer exhibits. The town's request to file a post-hearing brief was granted, and post-hearing briefs have been filed. The record is now closed.

#### FINDINGS OF FACT

1. The union is the certified bargaining representative of certain employees of the Milford ~~Police Department.~~
2. The town is a public employer as that term is defined pursuant to RSA 273-A.
3. The town and the union are parties to a collective bargaining agreement for the years 2005 through 2009. Like prior collective bargaining agreements dating to 1988, the contract's recognition clause includes sergeants.
4. The amended certification for the bargaining unit at issue is dated February 20, 1985 and expressly excludes sergeants.
5. The 1985 amended certification and the content of the recognition clause in the parties' current and past collective bargaining agreements was the subject of the town's Petition for Declaratory Ruling filed on December 30, 2004, Case No. A-0480-21. This petition resulted in PELRB Decisions 2006-046 and 2007-183. Decision 2007-183 issued on January 4, 2008 by email to attorneys Goodwin and Atlas, counsel for the union and the town in Case No. A-0480-21.

6. Decision 2007-183 provides, in part, that:

In accordance with RSA 273-A:8, I, the 1985 amended certification, and not the recognition clauses used since 1988, defines the bargaining unit. Under the circumstances of this case there is no need to address the provisions of the 2005-2009 CBA. However, as to any future contracts the Town is entitled to rely on the 1985 amended certification, and is not required to negotiate with AFSCME in order to exclude sergeants from the recognition clause, as that exclusion is required by the current certification unless the bargaining unit is changed in a PELRB modification proceeding.

7. Attorney Atlas forwarded decision 2007-183 to Chief of Police Douglas by email on Friday, January 4, 2008.
8. There are four sergeants in the department and by January, 2008 their status had been the subject of pending PELRB proceedings in Case No. A-0480-21 for 3 years.
9. Chief Douglas had been approached prior to January 4, 2008 by sergeants seeking to discuss their status at which times the Chief responded by saying they would have to wait for the PELRB's ruling. The Chief also stated during such inquiries that he had no idea what would happen to sergeants and the topic was not otherwise discussed.
10. Upon receiving decision 2007-183 Chief Douglas anticipated he would hear or receive some reaction or acknowledgement from the sergeants or the union indicating that they were in receipt of or aware of decision 2007-183.
11. On Wednesday, January 9, 2008 Chief Douglas contacted Detective Plumer, a union secretary, treasurer, and/or steward at the time, and advised that he was going to hold a meeting with Detective Plumer and a sergeant concerning a union matter. Detective Plumer does not recall that Chief Douglas asked to meet with a particular sergeant; Chief Douglas recalls that he specifically asked that sergeant Pelletier attend the meeting.

12. On Wednesday, January 9, 2008 Chief Douglas conducted a closed door meeting in his office with Detective Plumer and Sergeant Pelletier. Captains Nervik and Toom were also present.
13. At the meeting Chief Douglas asked questions relating to Detective Plumer and Sergeant's awareness of decision 2007-183. Detective Plumer and Sergeant Pelletier were not aware that decision 2007-183 had issued. Chief Douglas then stated that sergeants were out of the union. According to the Chief, he did not attach a specific date to this statement. According to Detective Plumer's January 31, 2008 written statement, the "Chief went on to tell us that on 01.04.2008 he got an email stating that the Sergeant's were now out of the union and it was effective on that date." (sic) Detective ~~Plumer's written statement erroneously identifies January 20, 2008 as the date of the~~ meeting. Sergeant Pelletier's January 21, 2008 written statement provides that "Chief Douglas stated that as of 01/04/08 the Sergeants were out of the union and he felt that someone should have notified us and he wanted the Sergeants to be aware of the change."
14. The meeting was relatively short, in the vicinity of 3-5 minutes, and Chief Douglas did not discuss the decision in further detail but advised Detective Plumer and Sergeant Pelletier that he would meet with them again if they desired once they had consulted with their union representative about the decision. Detective Plumer mentioned that he would talk to Officer Lessard, the union chapter chair at the time.
15. There was no evidence that Chief Douglas, Captain Nervik, or Captain Toom discussed decision 2007-183 with Detective Plumer or Sergeant Pelletier after January 9, 2008. The Chief did not subsequently retract any of the statements he made at the meeting, nor

did he or the town take any subsequent action to implement or document the exclusion of sergeants from the union as of January 4, 2008.

16. Sergeant Pelletier eventually informed the other 3 sergeants in the department that they were out of the union. Sergeant Pelletier's communications to the sergeants were based upon Chief Douglas' statements at the January 9, 2008 meeting, not Sergeant Pelletier's independent review of decision 2007-183.

17. Officer Lessard contacted union staff representative Steve Lyons, who advised that sergeants were still in the union until the current collective bargaining agreement expired.

## DECISION

### DECISION SUMMARY

~~Chief Douglas' statements at the January 9, 2008 meeting concerning decision 2007-183~~ were perhaps misguided but did not rise to the level of an unfair labor practice. There was also insufficient evidence that after the January 9, 2008 meeting the Chief or the town have documented or implemented the exclusion of sergeants from the coverage of the 2005-09 CBA. The union's complaint is dismissed.

### JURISDICTION

Pursuant to RSA 273-A:6 I, the PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5. *Appeal of State Employees Association of New Hampshire, Inc.*, 139 N.H. 441, 444 (1995).

### DISCUSSION

The central issues in this case are 1) whether Chief Douglas acted improperly in scheduling and conducting a meeting with Detective Plumer and Sergeant Pelletier about decision 2007-183; and 2) whether Chief Douglas erroneously informed the two officers that

sergeants were excluded from the union effective January 4, 2008, all in violation of RSA 273-A:5 I (a), (b), (e), (g) and (i). These statutory provisions provide as follows:

**273-A:5 Unfair Labor Practices Prohibited.** – I. It shall be a prohibited practice for any public employer:

- (a) To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter;
- (b) To dominate or to interfere in the formation or administration of any employee organization;
- (e) To refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon in negotiations;
- (g) To fail to comply with this chapter or any rule adopted under this chapter;
- (i) To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

I find there is insufficient evidence to implicate (e), (g), or (i), and accordingly this ~~portion of the complaint is dismissed on that basis. However, (a) and (b) are implicated in this~~ case, as there is a fair question in this case as to whether the town has interfered with its employees in the exercise of the rights conferred by this chapter or dominated or interfered in the administration of the union by virtue of Chief Douglas' conduct and statements on January 9, 2008.

It is important to note that neither RSA 273-A:5 (a) or (b) constitutes an absolute prohibition on discussions between management and bargaining unit employees concerning a matter pending at the PELRB. However, any such discussion must be appropriate in content and manner, as such discussions could conceivably give rise to a statutory violation. I find in this case the Chief's discussion was appropriately limited in content and time. The fact that the subject concerned a recently issued PELRB decision does not automatically mean that the town engaged in illegal direct dealing or improperly interfered with the union or bargaining unit members. The meeting at issue was relatively brief and was initiated to determine if Detective

Plumer and Sergeant Pelletier were aware of the recently issued PELRB decision. The discussions were concluded after a brief time to allow Detective Plumer and Sergeant Pelletier to confer with a union representative, with an offer of further discussion if they so desired. Accordingly, I find that the actions of Chief Douglas in calling the meeting and advising the two officers of the existence of the decision and its general content according to his understanding does not violate the provisions of RSA 273-A:5, I.

The union also claims that Chief Douglas erroneously informed Detective Plumer and Sergeant Pelletier that sergeants were excluded from the existing collective bargaining agreement and the union effective January 4, 2008. The union contends that Chief Douglas in effect unilaterally and improperly excluded sergeants from the collective bargaining agreement ~~contrary to the board's order in decision 2007-183.~~

The meaning and application of decision 2007-183 to the parties' 2005-09 CBA was recently addressed in PELRB Decision No. 2008-151, which states that under decision 2007-183 sergeants are covered by the existing 2005-09 CBA until its expiration. Although Chief Douglas' statements during the disputed meeting may have been ill-advised, there is insufficient evidence that after the disputed meeting on January 9, 2008 the Chief or the town implemented or otherwise carried out a plan or other action designed or intended to document and implement the exclusion of sergeants from the 2005-09 CBA effective January 4, 2008<sup>1</sup>.

Accordingly, based upon all the evidence in this case I find that the Chief and the town have not acted to unilaterally exclude sergeants from the 2005-09 CBA, and in fact have continued to treat sergeants as covered by the existing collective bargaining agreement based upon the evidence submitted in this case.

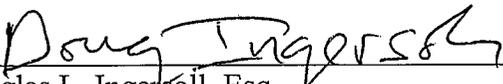
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<sup>1</sup> Apart from the arguments the town has made during PELRB proceedings concerning Decision 2007-183.

In accordance with the foregoing the union's complaint is dismissed.

So ordered.

August 12, 2008.

  
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Douglas L. Ingersoll, Esq.  
Staff Counsel/Hearing Officer

Distribution:

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Warren D. Atlas, Esq.