



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**UNITED STEELWORKERS LOCAL 8938/
MANCHESTER WATER WORKS**

COMPLAINANT

CASE NO. G-0058-5

v.

DECISION NO. 2008-171

CITY OF MANCHESTER

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: August 25, 2008 at the PELRB in Concord.

Appearances: Vincent A. Wenners, Jr., Esq.,
United Steelworkers, Local 8938/Manchester Water Works

Thomas I. Arnold, III, Esq.,
City of Manchester

Background:

The United Steelworkers, Local 8938/Manchester Water Works (the "Union") filed an unfair labor practice complaint against the City of Manchester on June 30, 2008. The Union claims the City agreed to apply a drug/alcohol policy negotiated during collective bargaining to all employees of the Manchester Water Works, including non-bargaining unit management employees. The Union claims the parties have not signed the July 1, 2007 to June 30, 2010

collective bargaining agreement because the City now refuses to apply the drug/alcohol policy to non-bargaining unit members. At the pre-hearing conference the Union claimed that the City reached a similar agreement with an AFSCME bargaining unit for the highway department, and some of the Union's witnesses will be employees of this AFSCME bargaining unit.

The Union claims that the City's actions constitute an unfair labor practice in violation of RSA 273-A:5, I (a), (b), (c), (e), and (h) and requests that the PELRB: 1) enforce the agreement; 2) order negotiations to continue; 3) order the City to apply the drug/alcohol testing policy to all employees of the Manchester Water Works; 4) order both parties to sign the collective bargaining agreement upon such understanding and agreement; and 5) grant such other relief as may be just.

The City filed its answer on July 14, 2008 and denies the charges, claiming that it did not agree to apply the drug/alcohol policy to non-bargaining unit employees. The City alleges that both parties ratified the contract in November, 2007 and the City is willing to sign the contract documents which have been in the possession of the Union since December, 2007. The City contends the ratified contract is binding upon the Union, and that the Union has no authority to bargain the terms and conditions of employment of non-bargaining unit employees. At the pre-hearing the City reviewed that the agreement concerning drug/alcohol testing is contained in the written collective bargaining agreement, and that the City never agreed during negotiations with the Water Works or the Highway Department bargaining units to apply the drug/alcohol testing to non-bargaining unit employees.

Accordingly, the City requests that the PELRB: a) deny and dismiss the ULP with prejudice; b) order the United Steelworkers to sign the Collective Bargaining Agreement; c) order the United Steelworkers to pay to the City all costs and expense, incurred in defending this

action which the City contends is frivolous; and d) order such other relief as may be just an appropriate.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether in the course of collective bargaining the parties agreed to apply the drug/alcohol policy to bargaining unit employees on the condition that the policy would be applied to non-bargaining unit employees as well?

WITNESSES

For the Union:

1. Michael Roche (Water Works)
2. Michael Olmstead (Water Works)
3. Maurice Croteau (Water Works)
4. Robert Cochran
5. John McCarthy (Highway Dept)
6. Daniel Garrity (Highway Dept)
7. George Magnan, III (Water Works)
8. Marc Montville (Highway Dept)
9. Bernard Martineau (Highway Dept)
10. Donald Boucher (Highway Dept)
11. Philip Deberardinis (Highway Dept)

For the City:

1. David Hodgen, Chief Negotiator (Retired)
2. Thomas Bowen, Water Works Director
3. Robert Beurivage, Water Works Assistant Director

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

For the Union:

1. Memorandum of Understanding
2. Proposed Collective Bargaining Agreement
3. Negotiating Notes

For the City:

1. Ground Rules for Negotiations 2/27/07
2. Memorandum of Understanding 11/14/07
3. Confidential Memorandum to Board of Mayor and Aldermen with City Clerks notification 11/20/07
4. AFSCME Master Agreement 2007-2010
5. All documents and notes produced during or for negotiations of the United Steelworkers 7/1/07 to 6/30/10 contract.
6. Any document or exhibit listed by the Petitioner

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.

DECISION

1. "Parties" means the named petitioner and respondent or the counsel/representative appearing in the case. The parties shall prepare and file a statement of stipulated facts and a list of agreed upon exhibits on or before September 26, 2008.
2. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists on or before September 26, 2008.

3. The parties shall mark all exhibits before hearing as agreed upon or for identification and have sufficient copies available for distribution at the hearing and also file their exhibits electronically as required by Pub 203.02.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the evidentiary hearing between the parties will be held on **October 8, 2008 at 9:30 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 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 10 days prior to the date of hearing.

So ordered.

August 25, 2008.



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

Distribution:

Vincent A. Wengers, Jr., Esq.
Thomas I. Arnold, III, Esq.