



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

**UNITED STEELWORKERS AFL-CIO**

**CASE NO. G-0058-6**  
**DECISION NO. 2008-248**

**v.**

**CITY OF MANCHESTER**

**APPEARANCES**

Representing: United Steelworkers AFL-CIO  
Vincent A. Weners, Jr., Esq., Manchester, New Hampshire

Representing: City of Manchester  
Thomas I. Arnold, III, Deputy City Solicitor, Manchester, New Hampshire

**BACKGROUND**

The United Steelworkers AFL-CIO, Local 8938 of Manchester ("Union") filed a petition for declaratory ruling on October 31, 2008. The petition relates to the proper pay grade for Edward Pepin, an inventory specialist employed by the Manchester Water Works. According to the petition, Mr. Pepin's current pay grade is 13, while inventory specialists employed at the Manchester Highway Department and Airport Authority are compensated at pay grade 16. The

petitioner contends that Mr. Pepin should be allowed to pursue a claim under the City Ordinances that he is also entitled to pay grade 16. According to the petition, Mr. Pepin and the Union previously grieved Mr. Pepin's pay grade and have submitted a request for Arbitration which they contend should be considered as a protective filing only.

The Union requests that the PELRB: 1) determine that the pay grade dispute is not subject to arbitration; 2) remand the matter to the Committee on Human Resources without prejudice to Edward Pepin's right to bring suit in the Hillsborough County Superior Court; and 3) determine that this matter arises under a City Ordinance and must be litigated in Hillsborough County Superior Court.

The City of Manchester filed an answer with defenses and exceptions on November 14, 2008. The City contends dismissal is required because: 1) the Union has failed to allege the specific statute, rule, or order whose applicability is in question in accordance with Pub 206.01 (a) (1); 2) the Union failed to comply with the statute of limitations as the petition relies on events which took place more than 6 months prior to the filing of the petition for declaratory judgment; and 3) the Union seeks remedies and asserts claims which are outside the jurisdiction of the PELRB.

The undersigned Hearing Officer has reviewed the parties' filings in this matter pursuant to Pub 206.01 and based upon this review the following order is issued.

## DECISION

### DECISION SUMMARY

The Petition for Declaratory Ruling is dismissed because the petition does not identify and relate to the applicability of any statute within the jurisdiction of the board to enforce, or any rule or order of the board.

## JURISDICTION

The PELRB has jurisdiction over petitions for declaratory rulings pursuant to RSA 541-A:1, V and Pub 206.01.

## DISCUSSION

RSA 541-A:1, V defines "declaratory ruling" as "an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency." Additionally, Pub 206.01 provides in relevant part:

(a) Any public employer, any public employee or any employee organization may petition the board under RSA 541-A for a ruling regarding the applicability of any statute within the jurisdiction of the board to enforce, or regarding any rule or order of the board, by filing with the board a petition for declaratory ruling setting out:

(1) The specific statute, rule or order whose applicability is in question; and

(2) A clear and concise statement of the facts giving rise to the petition.

(b) The board shall determine within 30 days of filing whether it shall dismiss such a petition or issue a ruling, and it shall subsequently give a ruling on all such petitions properly before it as expeditiously as possible.

Pursuant to Pub 206.01 (b), the PELRB has discretion to decide whether it will dismiss a petition for a declaratory ruling or issue a ruling on the merits. Further, both RSA 541-A:1, V and Pub 206.01 (a) require that a petition for declaratory ruling concern the applicability of a statutory provision within the jurisdiction of PELRB to enforce, or a rule or order of the PELRB. Additionally, under Pub 206.01 (a) (1) the Union has an affirmative obligation to plead "the specific statute, rule or order whose applicability is in question."

In the present case, the Union has not identified any "statute, rule or order whose applicability is in question." Instead, the Union is asking the PELRB to determine whether the pay grade dispute should be resolved through arbitration or a claim under a City Ordinance that should be litigated in the Hillsborough County Superior Court. However, in making this request for relief the Union is seeking an order that is beyond the scope of the PELRB's declaratory ruling jurisdiction. Accordingly, the Union's petition is dismissed without prejudice.

So ordered.

December 5, 2008

  
Douglas L. Ingersoll, Esq.  
Hearing Officer

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