



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**PITTSFIELD TOWN EMPLOYEES, AFT-NH,
LOCAL #6214**

COMPLAINANT

CASE NO. G-0060-4

v.

DECISION NO. 2008-266

TOWN OF PITTSFIELD

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: December 30, 2008

Appearances: Complainant: Emmanuel Krasner, Esq.
Respondent: Thomas J. Flygare, Esq.

Background:

Pittsfield Town Employees, AFT-NH, Local #6214, AFT, AFL-CIO (the "Union") filed an unfair labor practice complaint on October 29, 2008. The Union claims that the Town of Pittsfield (the "Town"), by requiring an employee to use up his vacation time prior to utilizing leave under the Family Medical Leave Act ("FMLA"), has changed an existing practice governing working conditions which violates Articles 1 and 26 of the parties' Collective Bargaining Agreement ("CBA"). The Union contends that, as a result, the Town violated RSA 273-A:5, I (h).

The Union requests that the PELRB: 1) order the Town to cease and desist from requiring its employees to utilize vacation time before they take paid sick leave and unpaid leave under the FMLA; 2) order the Town to restore any vacation leave used under its order to the employee; and 3) rule that the parties may name the PELRB as the final arbiter of grievance disputes and that such disputes may be submitted to the PELRB for resolution without being captioned as an unfair labor practice complaint.

On December 4, 2008 the Town filed its answer denying the Union's charge of unfair labor practice. The Town also claims that the Union's complaint is untimely. The Town requests that the PELRB: 1) dismiss the charge because (a) the Union failed to comply with the filing deadline required by Step 5 of the grievance procedure, (b) no violation has been alleged because no employee has been adversely affected by the Town's interpretation of the FMLA policy, and (c) Step 5 of the grievance procedure is unlawful; and 2) award the Town its fees and expenses in defending the charge.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union's complaint is untimely.
2. Whether the Town committed an unfair labor practice in violation of RSA 273-A:5, I (h) by requiring an employee to use up his vacation time prior to utilizing leave under the FMLA.

WITNESSES

For the Union:

1. Cara Marston
2. Jennifer Tedcastle
3. James Gerard
4. Jeff Cain
5. Kristen Ahearn
6. Sparky Gordon

7. Rick Walter
8. Terri Donovan
9. Laura Haaney

The Town did not identify any witnesses at this time.

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. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

For the Union:

1. Collective Bargaining Agreement, 2008-2010
2. Any written policy which the Town may have on the use of FMLA procedures
3. Pay records for Jennifer Tedcastle, James Gerard, Cara Marston, Jeff Cain, and Kristen Ahearn for the time they took Family Medical Leave.
4. Records and requests for hearing from Laura Haaney to the PELRB; and
5. Response from the PELRB

For the Town:

1. Collective Bargaining Agreement, 2008-2010
2. Grievance documents

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. 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 complainant and respondent or the counsel/representative appearing in the case.

2. At the pre-hearing conference, the parties indicated that they are engaged in meaningful discussions which may lead to a settlement, that they would like to continue a currently scheduled evidentiary hearing on that basis, and that they intend to file an Assented to Motion to Continue. Any Motion to Continue the currently scheduled evidentiary hearing shall be filed on or before January 9, 2008; otherwise, the evidentiary hearing will be held as previously scheduled. This provision in no way binds the PELRB to grant this or any other motion.

3. The complaining party shall inform the PELRB of any settlement of the pending issues immediately via e-mail indicating that the respondent agrees to the cessation of litigation on the pending matters.

4. The parties shall exchange their Witness and Exhibit lists no later than 5 days prior to the scheduled evidentiary hearing and the Town shall also specifically list the "grievance documents" referred to on its pre-hearing worksheet and provide a copy of each document to the Union.

5. The parties shall prepare and file a statement of stipulated facts no later than 5 days prior to the scheduled evidentiary hearing.

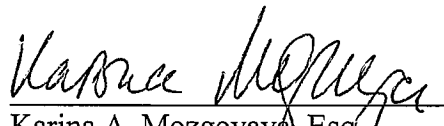
6. The parties shall pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

HEARING

Unless otherwise ordered as a result of the filing of a Motion to Continue or other motion, the evidentiary hearing between the parties will be held on **January 21, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled evidentiary hearing shall be continued, all time references as appear in paragraph ## 4, 5 and 6 shall be based upon the rescheduled date for the evidentiary hearing. 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.

December 30, 2008


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:
Emmanuel Krasner, Esq.
Thomas J. Flygare, Esq.