



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAMPTON POLICE ASSOCIATION, INC.

COMPLAINANT

CASE NO. P-0719-23

v.

TOWN OF HAMPTON

RESPONDENT

and

**HAMPTON FIRE FIGHTERS ASSOCIATION
LOCAL 2664, IAFF and HAMPTON FIRE DEPT.
SUPERVISORY ASSOCIATION, LOCAL 3017, IAFF**

COMPLAINANTS

CASE NO. G-0104-1

CASE NO. G-0105-1

v.

TOWN OF HAMPTON

RESPONDENT

DECISION NO. 2009-157

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 24, 2009

Appearances: Complainant (P-0719-23): J. Joseph McKittrick, Esq.
Complainants (G-0104-1 & G-0105-1): John S. Krupski, Esq.
Respondent: Elizabeth A. Bailey, Esq.

Background:

Hampton Police Association, Inc. (HPA), as an exclusive representative of the Police Sergeants' bargaining unit and the Police Officers' bargaining unit, filed an unfair labor practice complaint against the Town of Hampton (Town) on June 22, 2009. The HPA claims that the Town filed with the Rockingham County Superior Court a "Petition for Declaratory Judgment and for Preliminary Injunctive Relief" and a request for an "Ex Parte Injunction" seeking to be exempted from paying sick time to its employees utilizing Sick Leave Bank so long as the Sick Leave Bank had a negative balance. The Superior Court granted the Town's request for a temporary injunction. See *Town of Hampton v. International Brotherhood of Teamsters Local 633, et al*, Docket No: 09-E-0124. The HPA asserts that the Town violated the provisions of RSA 273-A:5, I by filing the above mentioned petitions without exhausting the administrative and contractual remedies, including the grievance and arbitration procedure set forth in the parties' CBAs. The HPA requests the PELRB to find that the Town committed an unfair labor practice and that the HPA is entitled to its costs and fees in bringing the action. The HPA also requests that the PELRB require the Town to withdraw its request for injunctive relief from the Superior Court and to submit its complaint to arbitration.

On June 25, 2009 the Hampton Fire Fighters Association, Local 2664, IAFF and Hampton Fire Department Supervisory Association, Local 3017, IAFF (collectively IAFF) filed an unfair labor practice complaint against the Town claiming that the Town violated the provisions of RSA 273-A:5, I by refusing to pay the Sick Leave Bank benefits and by refusing to negotiate and to pursue a contractual remedy. The IAFF requests the PELRB to find that the Town has violated RSA 273-A:5, I, to order the Town to cease and desist from refusal to pay

Sick Leave Bank benefits and to order the Town to utilize the grievance procedure contained in the CBAs.

On June 26, 2009 the Town filed a motion to stay the proceedings in the HPA case pending the resolution of the litigation in the Superior Court and a motion to dismiss the HPA's complaint. On July 6, 2009 the Town filed motions to stay and to dismiss in IAFF cases.

On July 6, 2009 the Town filed an answer and affirmative defenses to the HPA's complaint. On July 10, 2009 the Town filed an answer and affirmative defenses to the IAFF's complaint. In both answers, the Town denies the charges and claims, inter alia, that the complainants failed to state the claim upon which relief may be granted, that the complainants failed to allege, and cannot prove as a matter of law and fact, that the Town has violated the provisions of RSA 273-A:5, I, and that the PELRB has no authority to order the relief the complainants seek. In both answers, the Town requests, inter alia, that the PELRB dismiss the complaints, deny the complainants all forms of relief they seek, and award the Town its reasonable attorney's fees and costs.

The PELRB consolidated the HPA and IAFF cases for the purpose of the pre-hearing conference.

The Town filed motions to continue a pre-hearing conference and an adjudicatory hearing in HPA and IAFF cases on July 7 and July 10, 2009, respectively. In its motions, the Town requested, inter alia, that the PELRB schedule an expedited hearing on the Town's motions to stay and to dismiss. The Town's requests to continue a pre-hearing conference were denied in both cases. See PELRB Decisions Nos. 2009-141 & 2009-142. The judgment on the Town's motions to continue an adjudicatory hearing has been reserved. See PELRB Decisions Nos. 2009-141 & 2009-142.

On July 24, 2009 the representatives of the Town, HPA, and IAFF attended the pre-hearing conference at the PELRB offices in Concord. The representative of the Chauffeurs, Teamsters and Helpers Local Union No. 633 of New Hampshire (Teamsters) also attended the pre-hearing conference. The Teamsters filed an unfair labor practice complaint against the Town on July 22, 2009. The Teamsters' complaint sets forth the claims similar to the claims asserted by the HPA and the IAFF. See *Chauffeurs, Teamsters and Helpers Local Union No. 633 of New Hampshire v. Town of Hampton*, Case No. G-0114-1. The answer to the Teamster's complaint, which is due by August 6, 2009, has not yet been filed.

At the pre-hearing conference, the IAFF's representative indicated that the State Employees' Association of New Hampshire, Inc. (SEA) intends to intervene in the present matter on behalf of the bargaining unit it represents in the Town of Hampton. The undersigned hearing officer informed the parties that the PELRB intends to consolidate the cases for the purpose of adjudicatory hearing. The counsel for the Town expressed concerns regarding consolidation of the cases asserting that the CBAs involved in each case are dissimilar. In addition, the counsel for the Town restated the request for an expedited hearing on the motions to stay and to dismiss to be held separately from the hearing on the merits.

At the pre-hearing conference, the parties were informed that the adjudicatory hearing currently scheduled for August 6, 2009 had been cancelled. With the agreement of all the parties present, the adjudicatory hearing has been rescheduled for September 22, 2009.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.

2. The adjudicatory hearing currently scheduled for August 6, 2009 is cancelled. The adjudicatory hearing is hereby rescheduled for **September 22, 2009**. The rescheduling order will be issued.

3. The following cases are consolidated for the purpose of adjudicatory hearing: *Hampton Police Association, Inc. v. Town of Hampton*, Case No. P-0719-23 and *Hampton Fire Fighters Association, Local 2664, IAFF and Hampton Fire Department Supervisory Association, Local 3017 IAFF v. Town of Hampton*, Case Nos. G-0104-1 and G-0105-1. The PELRB will consider the consolidation of the above mentioned cases with *Chauffeurs, Teamsters and Helpers Local Union No. 633 of New Hampshire v. Town of Hampton*, Case No. G-0114-1, as this case progresses.

4. The Town's requests for an expedited hearing on the motions to stay and the motions to dismiss, filed in Cases Nos. P-0719-23, G-0104-1 and G-0105-1 are denied. The Board or its designee will hear the Town's motions on the day of the adjudicatory hearing on the merits, i.e., on September 22, 2009.

5. The Town's motions to continue an adjudicatory hearing filed on July 7, 2009 (Case No. P-0719-23) and on July 10, 2009 (Case Nos. G-0104-1 and G-0105-1) are denied.

6. The PELRB may require the parties to appear for further pre-hearing conferences.

7. The Chauffeurs, Teamsters and Helpers Local Union No. 633 of New Hampshire may request a further pre-hearing conference. The request for a pre-hearing conference shall be filed no later than **August 17, 2009**. This provision in no way binds the PELRB to grant this or any other request.

8. The parties shall prepare and file Statements of Stipulated Facts no later than **September 14, 2009**.

9. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than **September 14, 2009**.

10. The parties shall pre-mark any exhibits prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.03.

HEARING

Unless otherwise ordered as a result of the filing of a motion to continue or other motion, the adjudicatory hearing between the parties will be held on **September 22, 2009 at 9:00 AM** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 2 days. 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.

July 28, 2009



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

Distribution:

J. Joseph McKittrick, Esq.

Elizabeth A. Bailey, Esq.

John S. Krupski, Esq.

John D. Burke, Esq.