



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, Council 93, Local 1801, Nashua Housing Authority Employees

v.

Nashua Housing Authority

Case No. G-0050-5
Decision No. 2011-162

Order re: NHA Motion to Reconsider/Vacate Issuance of Subpoena

On June 1, 2011 the PELRB issued a subpoena duces tecum upon the application of the Union pursuant to Pub 203.01. The NHA has since filed a motion to reconsider and vacate the issuance of the subpoena contending, among other things, that the PELRB lacks jurisdiction and therefore has no authority to issue a subpoena and the information sought by the subpoena is not relevant.

The unfair labor practice complaint in this case involves the arbitrability of a grievance. The subject of the grievance relates to the pay rate for certain bargaining unit employees when performing snowplowing work. The Union asserts, among other things, that the NHA has committed an unfair labor practice by improperly refusing to participate in grievance arbitration concerning the dispute. The NHA has refused to arbitrate the dispute, claiming the parties did not agree to arbitrate such disputes and that the PELRB lacks jurisdiction.

The subpoena duces tecum was issued based upon the following authority establishing the PELRB's jurisdiction over complaints involving an alleged improper refusal to arbitrate:

RSA 273-A:5 contains general categories of unfair practices ... arguably broad enough to cover demands and refusals to arbitrate. Indeed, a wrongful refusal to arbitrate may be

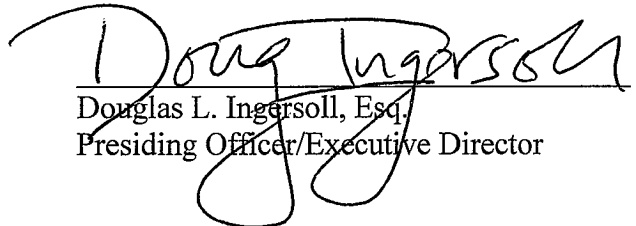
litigated as a breach of a CBA. Further, absent a contractual provision of a CBA granting the arbitrator authority to determine arbitrability, the PELRB has exclusive original jurisdiction over the threshold question of arbitrability.

Appeal of Belknap County Commissioners, 146 N.H. 757, 767 (2001)(citations and quotations omitted). *See also School District #42 of the City of Nashua v. Michael Murray et al*, 128 N.H. 417 (1986)(A wrongful refusal to arbitrate may be litigated as a breach of a CBA and is an unfair labor practice under RSA 273-A:5, I(h) and II (f). A wrongful demand to arbitrate is also an unfair labor practice.) The information to be produced pursuant to the subpoena relates to how bargaining unit employees have been compensated in the past for performing the snowplowing work at issue and it may assist and be relevant to the claims to be decided in this case on that basis.

In accordance with the foregoing the NHA's motion is denied. Whether the information produced pursuant to the subpoena will ultimately be accepted into the record is a matter reserved for the hearing in this case, currently scheduled for June 8, 2011.

So ordered.

June 2, 2011


Douglas L. Ingersoll, Esq.
Presiding Officer/Executive Director

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