



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Hampton Fire Fighters Association, Local 2664, IAFF

v.

Town of Hampton
Case No. G-0104-2
Decision No. 2011-295

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: November 28, 2011

Appearances:

Richard E. Molan, Esq. for the Complainant

Elizabeth A. Bailey, Esq. for the Respondent

Background:

The Union filed a complaint on October 20, 2011 claiming that the Town committed an unfair labor practice when it failed to satisfy a contractual requirement that an employee be given an explanation of why he was passed over for promotion. The Union further asserts that the Town did not promote the former Union president in retaliation for his union activities. The Union requests, among other things, that the PELRB find that the Town violated RSA 273-A:5, I (a), (d), (g), and (h) and order the Town to cease and desist from further discrimination and restraint of employee's exercise of their rights under RSA 273-A and to pay the Union's attorney's fees and costs.

The Town denies the charges and asserts, among other things, that the Union's complaint is time-barred under RSA 273-A:6, VII and barred by the doctrines of unclean hands, waiver,

estoppel, and laches; that the Union failed to state a claim upon which relief may be granted; that the Town's decision concerning the promotion in question was within the Town's management rights and is not grievable under the parties' CBA; and that the Union failed to allege and cannot establish any requisite discriminatory and/or retaliatory motivation by the Town. The Town requests that the PELRB dismiss the Union's complaint, deny the Union's requests for relief, and award the Town its reasonable attorney's fees and costs.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the Town's actions in connection with the promotion process involving the former Union president constitute a violation of RSA 273-A:5, I (a), (d), (g), and/or (h).

WITNESSES and EXHIBITS:

As outlined in the parties Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their List of Witnesses and 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 witnesses appearing on their respective list will be available at the hearing. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.03. 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 Union, the Town, or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference the Union indicated that it intends to amend its complaint and the Town indicated that it intends to file a motion to dismiss. Any motion to amend

the complaint together with a restated and amended complaint shall be filed no later than December 15, 2011. Any motion to dismiss shall be filed no later than January 6, 2012.

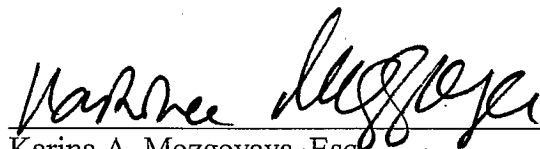
3. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than January 17, 2012.
4. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, the adjudicatory hearing between the parties will be held on **January 24, 2012 at 9:00 a.m.** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 hours.

So ordered.

November 28, 2011



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

Distribution:
Richard E. Molan, Esq.
Elizabeth A. Bailey, Esq.