



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Wayne Georgiana**

v.

**Manchester Professional Firefighters, Local 856, IAFF**

**Case No. G-0199-2**  
**Decision No. 2013-007**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: January 4, 2013

Appearances: Mr. Wayne Georgiana

Robert F. Berry, Jr., Esq. for the Manchester Professional  
Firefighters, Local 856, IAFF

Background:

On December 4, 2012 Wayne Georgiana filed an unfair labor practice complaint claiming that the Manchester Professional Firefighters, Local 856, IAFF (Union) breached its duty of fair representation when, among other things, it refused to process Mr. Georgiana's grievance through arbitration and entered into a verbal agreement with the City which modified the terms of a previously ratified collective bargaining agreement (CBA). Mr. Georgiana requests, among other things, that the PELRB find that the Union breached its duty of fair representation, order the Union to send Mr. Georgiana's grievance to arbitration and to cease and desist from entering into verbal agreements modifying the ratified CBA, and issue a letter of admonishment.

The Union denies the charges and claims that it acted in the best interests of the membership. The Union moves to dismiss the complaint on the grounds that, among other things, Mr. Georgiana waived his rights to protest the decision of the Union's leadership to enter

into the subject agreement because under the Union's Constitution and Bylaws, the Union's Executive Board has authority to act in the name of the Union, such acts being subject to confirmation by the membership at the next regular membership meeting; and at the next regular meeting, which Mr. Georgiana attended, the membership unanimously voted to ratify the subject agreement between the Union and the City. The Union also claims that Mr. Georgiana failed to exhaust administrative remedies provided in the Union's Bylaws. Mr. Georgiana objects to the Union's motion to dismiss.

#### ISSUES FOR DETERMINATION BY THE PELRB

Whether the Union breached its duty of fair representation as charged by Mr. Georgiana.

#### WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet,<sup>1</sup> Both parties reserve the right to amend their lists 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 and exhibits appearing on their respective lists will be available at the hearing. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit and bring an original and five (5) copies of each exhibit to the hearing.

#### DECISION

1. "A party" means Mr. Georgiana, the Union or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.

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<sup>1</sup> The parties filed a Joint Pre-Hearing Worksheet on December 31, 2012.

2. The Union's Motion to Amend Answer and Mr. Georgiana's Request to Amend Resolutions, both filed on January 3, 2013, are hereby granted.
3. A party may file a request to submit this case on stipulated facts, exhibits, and briefs. Any such request shall be filed no later than **January 8, 2013** and shall contain a submission schedule. An objection to such a request, if any, shall be filed no later than **January 11, 2013**.
4. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than **January 10, 2013**.
5. 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, the adjudicatory hearing in this case will be held on **January 18, 2013, at 9:00 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours.

So ordered.

January 4, 2013

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

Distribution:

Mr. Wayne Georgiana  
Richard E. Molan, Esq.  
Robert F. Berry, Jr., Esq.