



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**Professional Fire Fighters Association of Rye,
IAFF Local 4411**

v.

Town of Rye

**Case No. G-0212-1
Decision No. 2013-256**

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: December 12, 2013

Appearances: Richard E. Molan, Esq. for the Association
Michael L. Donovan, Esq. for the Town

Background:

On November 12, 2013 the Association filed an Unfair Labor Practice Complaint under the Public Employee Labor Relations Act, RSA 273-A. According to the Association, the Town violated Article 10, Section 5 of the parties' collective bargaining agreement when the Town failed to fill approved sick time vacancies on September 6 and 8, 2013. The Association filed a grievance which the Town denied up through Level III (Board of Selectmen). The Association then elected to proceed with grievance arbitration per the collective bargaining agreement. The Town has refused to participate in arbitration, contending the grievance is not subject to arbitration.

The Association claims the Town's refusal to proceed to arbitration is a violation of RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit, including the failure to submit to the legislative body any cost item agreed upon

in negotiations); and (h) (to breach a collective bargaining agreement). The Association requests that the PELRB order the Town to proceed to arbitration and pay the Association's costs and fees incurred in this matter.

The Town denies the charges. According to the Town, the grievance is not arbitrable because it involves the exercise of a management right (the decision about whether or not to fill a shift) which under Article 3, Section of the CBA is not subject to grievance arbitration.

ISSUES FOR DETERMINATION BY THE BOARD

Is the Association's grievance arbitrable?

Did the Association waive its right to pursue arbitration when it did not seek to bring a similar earlier grievance to arbitration?

Did the Town improperly refuse to proceed to grievance arbitration in violation of RSA 273-A:5, I (e) and (h).

WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01. 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 by placing identifying markers in the upper right corner of each exhibit, if possible, and bring an original and five (5) copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

DECISION

1. "Parties" means the Association, 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 parties requested that the hearing be rescheduled from January 7, 2014 to January 21, 2014. That request is granted, and the adjudicatory hearing is rescheduled for **January 21, 2014 at 8:30 a.m.** A rescheduling notice shall issue forthwith.
3. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than 10 days prior to the date of hearing.

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 21, 2014 at 8:30 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 3 hours. If either party believes that additional time is required, a 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.

Date: 12-12-13


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

Distribution: Richard E. Molan, Esq.
Michael L. Donovan, Esq.