



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SEABROOK PERMANENT FIREFIGHTERS  
ASSOCIATION, IAFF LOCAL 2847

Complainant

CASE NO. F-0121:11

v.

DECISION NO. 1998-038

TOWN OF SEABROOK

Respondent

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APPEARANCES

Representing Seabrook Permanent Firefighters Association,  
IAFF Local 2847:

Shawn J. Sullivan, Esq.

Representing Town of Seabrook:

Susan Chamberlin, Esq.

Also appearing:

Jere Duggan, Local 2847

David Downs, Local 2847

BACKGROUND

The Seabrook Permanent Firefighters Association, IAFF Local 2847 (Union) filed unfair labor practice (ULP) charges against the Town of Seabrook (Town) on January 14, 1998 alleging violations of RSA 273-A:5 I (c) and (e) for discriminating in terms and conditions of employment and for diverting \$1695.79 in compensation for a member of the bargaining unit. The Town filed

its answer and a motion to dismiss on January 30, 1998. The motion to dismiss and associated procedural arguments were heard by the PELRB on March 24, 1998, after an earlier continuance sought by and granted to the parties for a hearing scheduled for March 3, 1998. This decision is devoted to those arguments relative to identifying the appropriate forum to adjudicate this case.

#### FINDINGS OF FACT

1. The Town of Seabrook is a "public employer" of firefighters and other personnel within the meaning of RSA 273-A:1 X.
2. Seabrook Permanent Firefighters Association, Local 2847, International Association of Fire Fighters AFL-CIO, is the certified bargaining agent for firefighters employed by the Town.
3. Gary Fowler is a firefighter employed by the Town and is a member of the Union. On or about December 4, 1996, Fowler initiated a wage claim with the New Hampshire Department of Labor alleging a violation of RSA 275:48 in that the Town had wrongfully withheld \$1695.79 from his wages. The Town filed an answer with NHDOL on December 16, 1996 which challenged the jurisdiction of the NHDOL to adjudicate the dispute based on the argument that the Town had acted in accordance with the collective bargaining agreement (CBA) between the parties. Fowler's counsel filed an exception to the Town's assertion that NHDOL lacked jurisdiction on December 17, 1996.
4. According to information reiterated in the NHDOL hearing officer's decision dated August 21, 1997, on April 24, 1997 the Labor Commissioner issued a letter that the dispute should, in the first instance, be filed with the PELRB. Fowler was afforded the opportunity for a NHDOL hearing, which he opted for through a letter from counsel dated May 16, 1997. A hearing on the jurisdictional issue was held at NHDOL in Concord on July 21, 1997, the results of which are recorded in the hearing officer's decision of August 21, 1997. The NHDOL hearing officer granted

a request for certain rulings of law in that case, specifically, proposed rulings one and three through ten, inclusive. Ruling of Law Number 4, which was granted, was that "Fowler's claim that the Town cannot adjust wages pursuant to the 'Insurance' provision under the CBA directly invokes RSA 273-A:5 I (h)."

5. The parties' current collective bargaining agreement (CBA), which expired on March 31, 1998 subject to *status quo* provisions, contains a grievance procedure, concluding at Level 5 with final and binding arbitration. The applicable contract language defines a grievance "as an alleged violation, misunderstanding or misapplication with respect to any employee...that there has been a misinterpretation or an inequitable application of any provision of this agreement." There is no grievance of record as of the time the parties appeared before the PELRB on March 24, 1998.
  
6. Appearing before the PELRB on March 24, 1998 the Union stated that it was willing to waive all claims before the PELRB and under the CBA if the Town would proceed to conclude Fowler's wage claim before the NHDOL thus proposing a single route, single forum to resolve this matter. The Town countered by saying it was willing to waive all time limits for the filing of this matter as a grievance if the Union would agree to process this case as a grievance with the ultimate and final authority left with the PELRB.

#### DECISION AND ORDER

This is a case where one could very easily lose sight of the forest through the trees. The Fowler wage claim dates to December of 1996, thirteen months before the ULP was filed with this agency. It alleges a violation of RSA 275:48 for an improper withholding or diversion of Fowler's wages, yet the PELRB has no authority whatsoever to interpret, decide or enforce any claims under RSA 275.

The NHDOL hearing officer determined that the Fowler wage claim was equivalent to an invocation of a RSA 273-A:5 I (h) violation for breach of contract. We have no such complaint pending before us. The instant ULP is directed to alleged violations of RSA 273-A:5 I (c) and (e). Thus, if we were to adjudicate this case based on that rationale, we would be expected to stretch our review to an uncharged and unasserted violation of RSA 273-A:5 I.

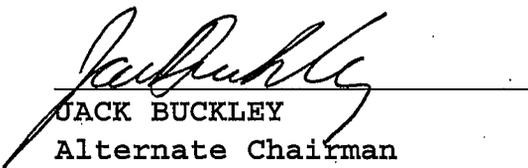
Finally, there is no grievance of record in these proceedings. Given this circumstance, there is no grievance for us to direct either through the grievance process or to the final and binding arbitration provisions of the agreement.

In its current state, this case presents some very practical problems. Fowler elected a remedy by the form of his RSA 275 complaint. We think it inappropriate for us to transform that complaint into a RSA 273-A:5 I (h) complaint without it ever having been plead. If and when a RSA 273-A:5 I (h) complaint is presented to us, we can then consider it on its merits.

The acts complained of in this case appear, emphasis on "appear," to suggest possible causes of action in more than one forum, e.g., the wage claim under RSA 275 and a potential ULP under RSA 273-A:5 I (h) which has yet to be filed. Given the parties' offers and counter offers (Finding No. 6) as to the exclusivity of a forum to be agreed upon between them, we find it far more appropriate to their purposes and for judicial/ adjudicatory economy, unless and until additional pleadings might be filed with the PELRB, for them to complete the proceedings they have already started at NHDOL.

So ordered.

Signed this 23rd day of April, 1998.

  
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JACK BUCKLEY  
Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members E. Vincent Hall and William Kidder present and voting.