State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LONDONDERRY ADMINISTRATIVE EMPLOYEES ASSOCIATION Complainant	:	
v.	:	CASE NO. M-0656:6 M-0656:8
TOWN OF LONDONDERRY Respondent	:	
TOWN OF LONDONDERRY Complainant	:	Case No. M-0656:7
v.	:	Decision No. 1999-047
LONDONDERRY ADMINISTRATIVE EMPLOYEES ASSOCIATION Respondent	:	(MOTION TO DISMISS)

BACKGROUND

Londonderry Administrative Employees Association (LAEA) filed unfair labor practice charges against the Town of Londonderry on February 2, 1998 alleging that the Town violated RSA 273-A:5 I (e), (h) and (i) when it implemented changes to its compensatory time policy. A grievance had been processed and an arbitration decision had been issued on December 10, 1997. The LAEA charged that the arbitrator had not decided issues that would resolve the dispute between the parties and on February 8, 1998 requested that the PELRB appoint an arbitrator. On March 13, 1999, the Town responded with an unfair labor practice

complaint pursuant to RSA 273-A:5 II (f) claiming the matter had been arbitrated. A hearing was scheduled and a stipulated order to arbitrate was issued on April 8, 1998.

An arbitration hearing was held on September 18, 1998 before Daniel J. Pagnano, the arbitrator who had previously heard the matter. Arbitrator Pagnano's Opinion and Award were issued on January 6, 1999. On February 5, 1999, LAEA filed a second unfair labor practice charge asking that Arbitrator Pagnano's decision be vacated on the basis that the arbitrator had exceeded his authority when he issued a decision contrary to state protective legislation regarding use of compensatory time, RSA 275-43 V (b) (1) and (2). LAEA charges both mistake of law and mistake in fact. On February 11, 1999, the Town answered that there were no errors of law and fact. Further, the Town responded that error does not provide a basis for overturning the arbitrator's award.

A pre-hearing conference was held before the undersigned hearing officer on April 13, 1999. In accordance with the pre-hearing conference report dated April 16, 1999, the issue of scope of review of arbitrability was briefed by the parties. Counsel for the Town submitted his brief on April 23, 1999 and counsel for LAEA submitted his brief on May 3, 1999, as scheduled. Attorney Broth filed a supplemental brief for the Town on May 12, 1999 and the Union filed its response on May 26, 1999.

No facts are in dispute. This case turns on a question of law as applied to the agreed upon facts. The collective bargaining agreement (CBA) in effect when the dispute arose in 1996 contains a straight forward grievance procedure in Article 30. Paragraph One of Article 30.5 of grievance procedure reads as follows:

> If the employee is not satisfied with the decision of the Board of Selectmen, the Association may file, within twenty (20) calendar days, following receipt of the decision of the Board of Selectmen, a request for arbitration to the American Arbitration Association, under its rules and regulations. The decision of the arbitrator shall be final and binding on the parties.

The definition of a grievance under Article 30.1 is "an alleged violation of any of the provisions of this Agreement,

except as provided for in Article 6 (Management Rights)." There are no other limitations explicitly placed on the arbitrator.

DECISION AND ORDER ON THE MOTION TO DISMISS

The agreement of the parties expressed in the grievance procedure of the collective bargaining agreement dictates the extent of an arbitrator's authority. Both parties acknowledge that there is no general authority granted to this Board to review an arbitrator's decision when the grievance procedure provides for "final and binding" arbitration of grievances, Appeal of Hooksett School District, 126 N.H. 202 (1985). Also, both parties agree that, despite an absence of language restricting the authority of the arbitrator, there are certain situations in which claims of mistake of law give reason for review of an arbitrator's award. Appeal of Board of Trustees of the University System of New Hampshire, 129 N.H. 632, 636 (1987). LAEA advances that certain claims of mistake of law or mistake of fact warrant review of an arbitrator's award. Board of Trustees v. Keene State College Education Association, 126 N.H. 339 citing at 342 (1985) White Mountain Railroad v. Beane, 39 N.H. 107, 108-110 (1859), Franklin Needle Company v. American Federation of Hosiery Workers A.F.L., 99 N.H. 101, 104-106 (1954). Further, both parties agree that this Board has ruled that an arbitrator's opinion and award was subject to review when it served a broad public policy. Manchester Transit Authority v. Amalgamated Transit Union Local 717, PELRB Decision No. 1997-01 (1997), *appeal docketed*, No. 98-038 (N.H. Supreme Court).

In the instant case, the parties have agreed to language that gives great authority to the arbitrator. There are no restrictions set in Article 30.5 of the CBA to limit the arbitrator's jurisdiction. This is not a complex grievance procedure suggesting review is anticipated. The last step of the grievance procedure, arbitration, is unequivocally final and binding. Both parties briefs offer circumstances under which Arbitrator Pagnano's decision might be reviewed, then revised or reversed. Counsel for the LAEA reads the undisputed facts as supporting review based on mistake of fact, mistake of law and for broad policy reasons. Counsel for the Town reaches the opposite conclusion on all three circumstances.

The Town has moved to dismiss LAEA's charges of unfair labor practices based on its contention that the decision of the arbitrator is not subject to review. The parties have bargained

for ironclad arbitration and the Board has a precedent of respecting the will of the parties on this matter. However, employing the standard applied to motions to dismiss, G. Williams v. D. O'Brien, 140 N.H. 595, 600 (1995), and so viewing the reasonable inferences that may be drawn from the undisputed facts in the light most favorable to the complainant, the respondent's motion to dismiss must fail. There are circumstances in which a final and binding arbitration award may be reviewed and the complainant has pled that the facts of this case fit the circumstances that would allow review.

The Motion to Dismiss is DENIED. A hearing on the merits is in order and shall be scheduled on the July docket of this Board. Any matters of reconsideration or clarification pursuant to RSA 273-A:6 VIII resulting herefrom shall be considered as procedural inquiries by the PELRB before it proceeds to hear the parties' presentations on the merits.

So ordered.

Signed this 8th day of JUNE, 1999.

GAIL C. MORRISON
Hearing Officer