



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LONDONDERRY ADMINISTRATIVE
EMPLOYEES ASSOCIATION

Complainant

v.

TOWN OF LONDONDERRY

Respondent

CASE NOS. M-0656:6
M-0656:8

TOWN OF LONDONDERRY

Complainant

v.

LONDONDERRY ADMINISTRATIVE
EMPLOYEES ASSOCIATION

Respondent

CASE NO. M-0656:7

DECISION NO. 1999-089

APPEARANCES

Representing Londonderry Administrative Employees Assoc.:

John Krupski, Esq.

Representing Town of Londonderry:

Mark Broth, Esq.

Also appearing:

William Wardwell, Town of Londonderry

Dick Plante, Town of Londonderry
Joseph Ryan, Town of Londonderry
Peter Curn, Town of Londonderry
Roy Melnick, Londonderry Administrative Employees Assoc.
Richard J. Bannon, Londonderry Administrative Employees
Association

BACKGROUND

These proceedings involve the consolidation of three related matters, all unfair labor practices (ULPs), which were consolidated and heard by the PELRB on August 19, 1999. They may be described chronologically as follows.

The Londonderry Administrative Employees Association (Association) filed a ULP against the Town of Londonderry (Town) (M-0656:6) on February 2, 1998 alleging violations of RSA 273-A:5 I (e), (h) and (i) resulting from breach of contract and denial of and unilateral changes to compensatory time provisions or policies. This followed a related grievance arbitration proceeding and award rendered by Arbitrator Daniel Pagnano on December 10, 1997, also referenced as AAA Case No. 1139-0001-0597. Thus, when the Town filed its answer to the ULP complaint on February 19, 1998, part of that answer was in the form of an affirmative defense that the final and binding arbitrator's award was dispositive of the subject matter of the charge.

The second matter was a ULP filed by the Town against the Association on March 13, 1998 (M-0656:7) claiming a violation of RSA 273-A:5 II (f) resulting from the Association's seeking the appointment of an arbitrator for a matter which had already been arbitrated. The Association filed its answer to these charges on March 25, 1998, asserting, *inter alia*, that the arbitrator, not the parties, formed the issues which formed the basis of the December 10, 1997 award.

On April 8, 1998, the parties, both represented by counsel, appeared before a PELRB hearing officer and agreed to a stipulated order in order to dispose of the two foregoing ULP's, to wit:

STIPULATED ORDER

The parties agreed to the following procedures to dispose of the pending unfair labor practice complaints:

1. The parties agree to proceed to arbitration on the grievance filed by the LAEA dated January 14, 1998.
2. The issues submitted to the arbitrator shall be:
 - a) Whether Article 12. Section 6 of the parties' collective bargaining agreement permits exempt employees to accrue compensatory time.
 - b) Whether the Town has any obligation to compensate employees for accrued, unused compensatory time upon the employees' separation from employment.
 - c) Whether the Police Department's decision that compensatory time must be used within the pay period next following the one in which it was earned violates the decision of Arbitrator Pagnano and/or the collective bargaining agreement.
 - d) What amount, if any, of compensatory time has been accrued by Captain Melnick.
 - e) Whether the Town violated Article 12, Section 6 of the parties' collective bargaining agreement when it denied Captain Melnick's January 5, 1998 request to use eighty (80) hours of compensatory time.
3. The parties agree to submit these issues to Arbitrator Pagnano.
4. The PELRB will retain jurisdiction of this case pending the completion of the arbitration proceedings.
5. The parties will notify the PELRB within thirty (30) days of the completion of the arbitration proceedings. If neither party requests reopening of the pending unfair labor practice cases within that thirty (30) day period, the cases will thereafter be administratively dismissed from the Board's docket of cases.

Agreed this 8th day of April, 1998.

/s/Mark T. Broth
for the Town of Londonderry

/s/ Roy Melnick, President
for the Londonderry Admin.
Employees Association

The second arbitration hearing, pursuant to the Stipulated Order, was held on September 18, 1998. Arbitrator Pagnano issued

his decision on January 6, 1999. On February 5, 1999, the Association filed a second ULP against the Town (M-0656:8) alleging violations of RSA 273-A:5 I (e) (g) and (h) resulting from the arbitrator's allegedly exceeding his authority and committing "clear mistakes of fact and law." It further sought to vacate the arbitration decision of January 6, 1999 for those reasons. The Town filed an answer to these new charges on February 11, 1999.

A pre-hearing conference was held with a PELRB hearing officer on April 13, 1999 relating to all three cases: M-0656:6, M-0656:7 and M-0656:8. Both sides were represented by counsel. The pre-hearing conference report indicates that the parties agreed to file briefs on or before April 23, 1999 on the "preliminary issue" of "whether the PELRB has authority to review the arbitrator's decision." In filing its brief pursuant to the pre-hearing conference report, the Town also filed a motion to dismiss. The filing of both initial and supplemental briefs was completed by the parties on May 26, 1996.

The PELRB hearing officer issued a decision on the Town's Motion to Dismiss on June 8, 1999 in which that motion was denied. The hearing officer determined that a hearing on the merits was in order and preserved as preliminary procedural matters any issues pertaining to reconsideration or clarification that might be raised pursuant to RSA 273-A:6 VIII. Decision No. 1999-047.

These cases then came to us for hearing after the Town had filed a Motion for Reconsideration of Decision No. 1999-047 on July 8, 1999 and the Association had filed its objections thereto on July 20, 1999. The parties, both represented by counsel, appeared before us on oral argument on August 19, 1999 after which the record was closed.

FINDINGS OF FACT

1. The Town of Londonderry employs personnel in administrative positions throughout town government and across departmental lines. Thus, it is a "public employer" within the meaning of RSA 273-A:1 X.
2. The Londonderry Administrative Employees Association is the duly certified bargaining agent for adminis-

trative employees employed by the Town.

3. The Town and the Association are parties to a collective bargaining agreement for the period July 1, 1994 through June 30, 1997 and continuing thereafter under *status quo* provisions. It contains the contested, grieved article (Article XII, Section 6) and a grievance procedure (Article 30, Sections 1 and 5). Those sections read as follows:

ARTICLE 12: SCHEDULED WORK WEEK AND HOURS

* * * * *

6. Exempt employees required to attend meetings, hearings or other Town activity or are otherwise required to work in excess of the normal work schedule due to operational needs of their Department shall be granted compensatory time off. Compensatory time off will be scheduled at the convenience of the Department.

* * * * *

ARTICLE 30: GRIEVANCE PROCEDURE

1. Definition

A grievance under this article is defined as an alleged violation of any of the provisions of this Agreement, except as provided for in Article 6 (Management Rights).

* * * * *

5. If the employee is not satisfied with the decision of the Board of Selectmen, the Association may file, within twenty (20) calendar days, following the 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.
4. In accordance with the parties' stipulations to the

hearing officer at pre-hearing on April 13, 1999, their agreement to file hearing briefs and with our duty to review decisions of a hearing officer under RSA 273-A:6 VIII, we first address and revisit the jurisdictional issue in these proceedings.

DECISION AND ORDER

Our general authority to determine arbitrability may be found in Nashua School District v. Murray, 128 N.H. 417 (1986) and Appeal of Westmoreland School District, 132 N.H. 103 (1989) wherein the Court found that the PELRB "as an adjunct to its responsibilities to interpret RSA Chapter 273-A, has the implicit authority to decide whether a dispute involves a matter addressed by a CBA" and whether it can be said with "positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute." There is no question, either under the CBA or by the parties' stipulations to PELRB officials, that the contested matter was a grievance as defined by Article XXX, Section 1 and that the parties had agreed to arbitrate under final and binding conditions.

We next consider unique provisions which restrict our scope of review. When we turn to Decision No. 1999-047, page 3, we see the hearing officer's observation that "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." See also Board of Trustees v. Keene State College Education Association, 126 NH 339, 342 (1985). Looking to Appeal of Hooksett School District, 126 N.H. 202, 204 (1985), we are reminded that we have jurisdiction, in the context of a ULP, to interpret a CBA in order to determine if, when and how relief, if appropriate, should be awarded if the CBA contains no final and binding resolution procedure. However, that case suggests that we have no such authority if there is a contract grievance provision ending in final and binding arbitration, such as was the case in Londonderry. The issue of reviewability of an arbitrator's award is not triggered unless the parties' CBA exhibits that they did not bargain to receive and be bound by the arbitrator's interpretation of that contract. Where the contract language clearly indicates that the parties did not bargain for the arbitrator's final interpretation of the contract, this board has been held to have been in error by applying principles of

non-reviewability to an arbitrator's award. Appeal of Board of Trustees. 129 N.H. 632, 635 (1987).

Now we are faced with a situation where the parties CBA does contain the methodology for final and binding resolution. See Finding No. 3. In the context of a ULP proceeding, we have authority to address the issue of an arbitration award's consistency with the terms of the governing CBA, vis-a-vis the assessment of a RSA 273-A:5 I (h) violation. Board of Trustees v. Keene State College Education Association, 126 N.H. 339, 342 (1985). Here we are satisfied that the arbitrator comported with the duties assigned to him in that capacity, notwithstanding the Association's claim that he was allowed to frame the issues in the December 10, 1997 award, because the parties addressed with great specificity and precision the issues they wished addressed, as noted in the Stipulated Order above, in the follow-on proceedings, as represented by the award of January 6, 1999. That award resulted in the not uncommon and sometimes inevitable situation where it was not satisfactory to one of the parties. Such dissatisfaction, in the setting of a final and binding arbitration award, is not grounds for us to change the award. The parties have received the benefit of their bargain, as manifested by the CBA, in the form of final and binding grievance arbitration, a result totally consistent with public policy for a "workable grievance procedure" which promptly and effectively addresses and decides grievances which could otherwise fester in a labor-management environment. RSA 273-A:4. Under the circumstances of this case, we will not disturb that result.

Under Keene State College, *supra*, we are bound to address the issue of an arbitration award's consistency with the terms of the controlling CBA "only in instances where the CBA places restrictions on the discretion of the [arbitrator] or provides for administrative judicial review...or, in the case of an unrestricted submission to arbitration, an allegation is made that the arbiters either expressly intended that the case be decided according to principles of law and were mistaken in their application thereof." 126 N.H. 339, 342 (1985). The Stipulated Order does not reveal such an expectation. Over and above the issues stipulated for decision, no restrictions were placed on the arbitrator. Finally, to the extent the Association believes its relief rests in RSA 275, specifically 275:43 and 275:45, those arguments are far more appropriate for the arbitrator, who may assign them whatever weight he deems appropriate, than they are for this board whose authority is generally accepted to

extend over the provisions of RSA 273-A and 273-C as opposed to actions which may be processed through other branches of government. See Seabrook Permanent Firefighters v. Town of Seabrook, Decision No. 1998-038 (April 23, 1998).

All pending charges of unfair labor practices are dismissed and the Town's Motion to Dismiss filed April 23, 1999 is GRANTED.

So ordered.

Signed this 22nd day of September, 1999.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Seymour Osman and E. Vincent Hall present and voting.