

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2973, Keene Public Works

Petitioner

v.

City of Keene

Respondent

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CASE No. A-0549-4

DECISION No. 2002-002

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 2973, Keene Public Works (hereinafter referred to as the "Union") filed a complaint on November 21, 2001 against the City of Keene (hereinafter referred to as the "City") charging its agents within the Department of Public Works with a course of conduct alleged to consist of unfair labor practices involving disparate treatment of employees, unilateral changes in the application of benefits and past practices, and undertaking intimidating actions against employees amounting to the interference with union administration. The Union seeks relief in the form of a finding that the City has pursued unfair labor practices, a cease and desist order from the PELRB, a public posting of the PELRB order and also to be reimbursed for all fees and costs necessary to pursue the complaint.

The City of Keene filed its answer to the unfair labor practice complaint on December 6, 2001 that generally denied the course of conduct and other actions of the City's agents as alleged by the Union. For its part, the City seeks relief from the PELRB in the form of a dismissal, with prejudice, of the Union's complaint and an order finding the Union to have abused the procedures of the PELRB regarding unfair labor practices. The City also seeks reimbursement of fees and costs necessary to defend the charges contained within the Union's complaint.

At the Pre-Hearing Conference the City indicated its intention to file a Motion to Dismiss that would, if granted, be dispositive of some, if not all, of the charges contained within the Union complaint. The counsel for both parties agreed that they could resolve, between themselves, certain clarifications requested by the City's counsel that the Union state which of the alleged actions constituted violations of which statutory provisions. Union counsel brought a scrivener's error appearing within paragraph #16 and paragraph #26 of the complaint and the Hearing Officer accepted it as an oral amendment to the complaint

PARTICIPATING REPRESENTATIVES

For the Union: Robert Van Campen, Esquire
Steven Lyons, Staff Representative, AFSCME Council 93

For the City: Thomas J. Flygare, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

The parties have stipulated that the following issues are the critical issues submitted for determination:

1. Does the PELRB have jurisdiction to consider any or all of the the alleged breach of contract charges contained within the Union's complaint?
2. Do the actions of certain City employees that affected Union President Frank Hoye or the City's inaction in stopping said actions constitute violations of RSA 273-A:5?

WITNESSES

For the Union (Petitioner):

1. Frank Hoye, Union President
2. John Coons, Union Vice President and Crew 4 Operator,
3. Birney Robbins, Crew 1 Foreman
4. *Harry McKelvey, Engineer, (referenced in complaint as employee "A")
5. *Robert Deyo, Crew Member, (referenced in complaint as employee "B")
6. Craig Cashman, Crew Member, (referenced in complaint as employee "C")
7. Michael Waldon, Crew Member, (referenced in complaint as employee "D")

* Counsel has advised that subpoena's may become necessary for these two witnesses

For the City (Respondent)

1. Kurt Bloomquist, Director of Public Works Department
2. Michael Damron, Deputy Director of Public Works Department
3. Bruce Tatro, Highway Supervisor
4. Peter Schumway, Human Resource Director

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Union:

1. Unit Certification Form
2. Collective Bargaining Agreement, 7/1/99-6/30/02
3. Memo from Hoye to Tatro , dated 8/31/01
4. The T2 Challenge Training announcement
5. Letter from Bloomquist to Hoye , dated 8/22/01
6. Minutes from Public Works Steering Committee, dated 5/2/01
7. Copy of e-mail from Tatro to Bloomquist , dated 11/02/01, with handwritten notations by Mr. Lyons

For the City:

1. None known at the time of hearing. Attorney Flygare indicated that he had not yet conferred with his client in this regard. Counsel shall identify and provide opposing counsel with copies of all exhibits in accordance with the Orders appearing below.

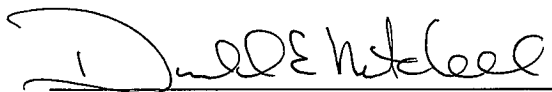
Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

DECISION

1. The Union's counsel shall provide the City's counsel with a written clarification of the Union's complaint indicating which alleged actions or charges constitute violations of which provisions of RSA 273-A:5 on or before January 23, 2002.
2. The City's counsel shall forward to the Union's counsel a List of Exhibits and copies of all such exhibits on or before January 23, 2002.
3. The City's counsel shall file his Motion to Dismiss a part or all of the Union's complaint on or before February 18, 2002.
4. The Union's counsel shall file his response to the City's Motion to Dismiss on or before March 1, 2002.
5. The Union's counsel shall make any necessary request for subpoena's in to the PELRB, in writing, providing all necessary information for completion and issuance and shall make arrangements to pick up the subpoenas from the PELRB and perfect service upon the intended witness.
6. Not later than five (5) days before the scheduled date of the evidentiary hearing, as required by Rule Pub 203.01(b), the party representatives shall exchange their Final Exhibit List and Final Witness List indicating the purpose of each witness's testimony. At the same time, each shall deliver a copy of their respective lists to the PELRB. The party representatives shall meet, or otherwise arrange, to pre-mark all exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
7. Any additional preliminary, procedural or dispositive motions, other than specifically addressed above shall be filed by the parties no later than fourteen (14) days prior to the scheduled date of the hearing as appears below.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, March 5, 2002 beginning at 9:30 A.M.

Signed this 10th day of January, 2002



Donald E. Mitchell, Esq.
Hearings Officer