



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

Town of Durham	*	
	*	
	*	
Complainant	*	
	*	Case No. U-0612-8
v.	*	
	*	Decision No. 2002-067
Durham Professional Firefighters Association	*	
IAFF, Local 2253	*	
	*	
Respondent	*	
	*	

APPEARANCES

For the Town of Durham:

J. Joseph McKittrick, Esq., Counsel

For the Durham Professional Firefighters Association, Local 2253:

John S. Krupski, Esq., Counsel

BACKGROUND

The Town of Durham ("Town") filed unfair labor practice (ULP) charges against the Durham Professional Firefighters Association, Local 2253, IAFF ("Union") on October 5, 2001, alleging violations of RSA 273-A:5 II (d), (f) and (g) resulting from the Union's filing a grievance on behalf of a "probationary firefighter" and pursuing that grievance to the final step of arbitration after it had been denied by the Town. The Union filed its response on October 22, 2001.

This ULP case was subsequently heard by the PELRB on March 12, 2002, in accordance with arrangements made and recited in a pre-hearing conference memorandum dated December 20, 2001 (Decision No. 2001-135).

The PELRB issued its decision (Decision No. 2002-038) in this matter on March 21, 2002, failing to find the commission of a ULP and ordering the parties to proceed to grievance arbitration forthwith in accordance with the procedure contemplated in the collective bargaining agreement (CBA). On April 19, 2002, the Town filed a Motion for Rehearing. The Union filed its objections thereto on May 3, 2002. The PELRB denied the Motion for Rehearing on May 16, 2002 in Decision No. 2002-059. In the meantime, the Union filed a Motion Pursuant to RSA 273-A:7 on May 3, 2002 seeking injunctive relief to compel the Town to proceed to arbitration. In that document, the Union asserts that the Town, through its counsel "has informed the American Arbitration Association that they will not proceed to arbitration until they have an 'order to proceed to arbitration by a court of final jurisdiction'." The Town filed objections

to the Union's RSA 273-A:7 Motion on May 17, 2002. The PELRB heard the parties' respective arguments on the pending motion on June 13, 2002.

During the course of the parties' presentations before the PELRB on June 13, 2002, counsel for the Town represented that he would, on behalf of his client, be filing a Notice of Appeal with the New Hampshire Supreme Court within the next several days and that he would also be filing a motion to stay the PELRB's order to proceed to arbitration at approximately the same time. The Town, through counsel, filed its Notice of Appeal with the PELRB on June 14, 2002 and filed its Motion to Stay the administrative order to arbitrate with the PELRB on June 20, 2002.

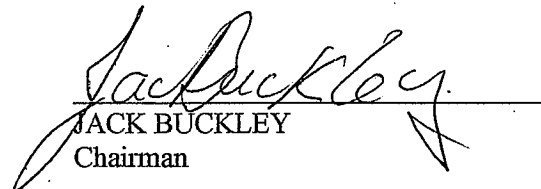
On July 1, 2002, the Union filed its own Motion to Hold in Abeyance relative to proceedings under RSA 273-A:7 argued before the PELRB on June 13, 2002. In that motion, the Union represented that the parties, through their respective counsel, held a conference call with their designated arbitrator on June 25, 2002, that they agreed to proceed to arbitration on September 27, 2002, and that this agreement to arbitrate would expire and become void if the Supreme Court should issue a stay in furtherance of the Town's motion filed with the PELRB on June 20, 2002. On July 2, 2002, the Union filed an objection to the Town's Motion to Stay with the Supreme Court.

#### DECISION AND ORDER

We commend the parties for their efforts at calming the rhetoric exchanged with the filing of the Union's RSA 273-A:7 motion and for their agreement to proceed to arbitration. This agreement obviates the need for us to pursue RSA 273-A:7 relief at this time and fulfills the elements of the relief ordered in Decision No. 2002-038. Accordingly, we hereby confirm the action taken at the hearing of June 13, 2002 whereby we unanimously denied the Town's motion dated June 11, 2002 and filed June 12, 2002 asking us to stay our order to proceed to arbitration. We grant the Union's request to hold the pending pleadings in abeyance until the completion of the arbitration proceedings set to commence on September 27, 2002. We further direct the Union to notify the PELRB and provide a copy of the arbitrator's decision within ten (10) days of the date it was issued. Any party seeking further proceedings before the PELRB on the limited issue of the pleadings now held in abeyance shall make its request therefor, inclusive of an explanation of why the arbitration process failed to resolve the outstanding issues identified in Decision No. 2002-038, within thirty (30) days of the date of the aforesaid arbitration decision. Failing a request from either party for a further hearing in this matter within the said thirty (30) day period from the date of the arbitrator's award, all pending matters, including the Union's request for injunctive relief, shall be dismissed from the PELRB's docket of cases.

So ordered.

Signed this 18th day of July, 2002.

  
JACK BUCKLEY  
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Richard W. Roulx and Daniel J. Brady present and voting.