



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SEA, Local 1984 SEIU,
Belknap County Jail Employees

Petitioner

v.

Belknap County, Department of Corrections

Respondent

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Case No. S-0333-4

Decision No. 2002-077

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The SEA, Local 1984 SEIU, Belknap County Jail Employees, (hereinafter referred to as the "Union") filed unfair labor practice charges on May 9, 2002 pursuant to RSA 273-A:5 I (b) alleging that the Belknap County, (hereinafter referred to as the "County"), through the conduct of its agents have failed to follow grievance procedures and failed to bargain in good faith in responding to a grievance involving an alleged assignment of an officer with less seniority than another to a shift.

The Union seeks relief in the form of an Order compelling the County to arbitrate the stated grievance and to desist from undertaking further alleged unilateral actions.

The County filed its answer in a timely fashion on May 24, 2002. The County denies that it made any assignment to a vacancy in violation of the parties' agreement or that it not bargained in good faith. It also asserts in its answer that the Union did not exercise any grievance rights that may otherwise be available because it did not exercise them in a timely fashion.

The County requests that the PELRB dismiss the complaint filed by the Union or otherwise deny the relief being sought by the Union. At the Pre-Hearing Conference, the parties agreed that an oral Motion to Dismiss could be made by the County's counsel and that

an oral Objection to that motion could be made by the Union at that time and so recorded. The parties further agreed that in the event they are able to reach agreement on all facts necessary for a determination as to whether the Union's grievance was timely filed, that no evidentiary hearing would be required on that issue.

PARTICIPATING REPRESENTATIVES

For the Complainant: Brian Mitchell , Negotiator-Field Representative

For the Respondent: Warren D. Atlas, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the Union exercised its grievance rights in a timely manner?
2. Whether or not the County's alleged actions constituted a violation of the statutory obligation to bargain in good faith?
3. Whether or not the County's actions constituted a breach of the grievance procedure included in the parties' collective bargaining agreement?

WITNESSES

For the Complainant:

1. Timothy Doris, Corrections Officer, Union Steward
2. David Berry, Corrections Officer
3. William H. McCann, previous Union representative

For the Respondent:

1. Superintendent Joseph Panarello
2. Nancy E. Cook
3. Tanya Graves, Corrections Officer
4. Lt. Richard Grenier

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

Joint Exhibits:

1. Letter from McCann to Panarello, dated 11/30/01
2. Letter from McCann to Panarello, dated 12/03/01, with envelope
3. Letter from McCann to Commissioner Thurston, dated 12/18/01, with envelope
4. Letter from Commissioner Thurston to McCann, dated 12/28/01
5. Letter from McCann to Commissioner Thurston, dated 1/07/02
6. Letter from Attorney Atlas to McCann, dated 1/17/02
7. Letter from Attorney Atlas to McCann, dated 2/08/02

For the Complainant:

1. Letter from McCann to Attorney Atlas, dated 1/23/02
2. Letter from McCann to Attorney Atlas, dated 2/11/02

In addition, the Union reserves the right to present such other exhibits that may be necessary for its case in chief, for impeachment or on rebuttal.

For the Respondent:

- A. Letter from Panarello to McCann, dated 12/11/01
- B. Letter from Attorney Atlas to McCann, dated 1/17/02
- C. Letter from Attorney Atlas to McCann, dated 2/26/02

In addition, the City reserves the right to present such other exhibits that may be necessary for the City's case in chief, for impeachment or on rebuttal.

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.

LENGTH OF HEARING

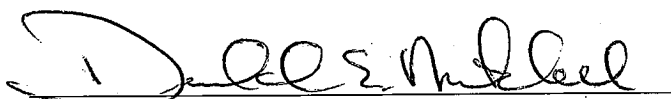
The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than fourteen (14) days prior to the scheduled hearing.

DECISION

1. The County made an oral Motion to Dismiss the Union's complaint on the basis that the initial grievance was untimely filed and therefore no subsequent refusal to proceed with the grievance procedure could constitute either a statutory violation or breach of the parties' collective bargaining agreement. The Union objected to the County's Motion to Dismiss thereby establishing a potentially dispositive issue upon which this matter may be dismissed.
2. The parties shall meet and confer on or before July 24, 2002 for the purpose of agreeing to a mutual Stipulation of Facts necessary to a full consideration of the issue of the timeliness of the Union's actions in filing the underlying grievance. In the event that the parties come to agreement on all material and relevant facts necessary for a determination by the PELRB, then each shall sign the joint Stipulation of Facts and the County's counsel shall submit it to the PELRB simultaneously with his legal memorandum in support of his motion on or before August 8, 2002. The Union shall submit its own legal memorandum in support of its objection to the motion on or before that same date.
3. In the event that the parties are unable to stipulate as to all facts necessary to a determination of the appropriateness of dismissal, then they shall endeavor, in good faith, to stipulate to as many facts as possible on all issues in dispute, both procedural and substantive, to be signed by each and filed by the Union with the PELRB on or before August 16, 2002.
4. In further event that the County does not prevail on its Motion to Dismiss on the basis of an agreed Stipulation of Facts and supportive legal memoranda, an evidentiary hearing on both the Motion to Dismiss and the merits of the Union's complaint shall be conducted on Tuesday, August 20, 2002.
5. The party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the scheduled hearing. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.

6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
7. Unless otherwise ordered as a result of the filing of any subsequent motion or prior disposition on pleadings, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on said August 20, 2002 beginning at 9:30 A.M.

Signed this 2nd day of July, 2002

A handwritten signature in cursive script, appearing to read "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer