

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Manchester Professional Firefighters Association
Local 856, I.A.F.F.

Complainant

v.

City of Manchester Fire Department

Respondent

Case No. F-0104-42

Decision No. 2002-082

MOTION FOR DECLARATORY RULING

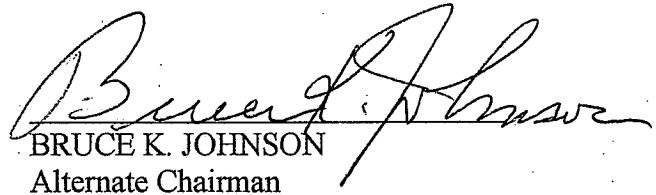
The Board, meeting at its offices in Concord, New Hampshire, on July 16, 2002, took the following actions:

1. It convened for the purposes of hearing arguments by the parties, each represented by counsel, on the Association's Motion for Declaratory Ruling and the City's objections thereto, including a jurisdictional issue pertaining thereto and about which the parties mutually decided that the City was the moving party and would proceed first.
2. It entertained oral arguments and received pre-hearing statements from the parties on the jurisdictional issue of whether it was procedurally correct and/or timely for the PELRB to intervene in the request for a declaratory ruling inclusive of the City's issues of (1) whether the PELRB has jurisdiction over the claims that the Union raises in its request for declaratory ruling at this time and (2) whether the claim raised by the union is ripe for adjudication by the Board at this time. (City brief July 16, 2002, p. 5)
3. It examined the record, inclusive of the Union's pre-hearing conference statement and the City's opposition brief, both of which set forth the parties' agreement to arbitrate in Article 35.3 of their CBA and represented that said interest arbitration proceeding occurred on May 21, 2002 before Arbitrator Paul Dorr. There is no evidence that Arbitrator Dorr has rendered his decision in this case of this date.

4. It determined that, without an arbitrator's decision having been rendered in this case, any action it might take under PUB 206.01 would be speculative, hypothetical, contrary to public policy considerations between the time the arbitration case was heard and the award written, and beyond the intent of PUB 206.01 in light of a parallel pending ULP now being processed by the Union against the City. Likewise, it found the parties had an agreement to arbitrate under Article 35.3 of the CBA and that it would now be inappropriate to exercise jurisdiction in this matter which has not concluded and in which the arbitrator retains jurisdiction.
5. It found that its intervention in a dispute which, in the City's words (brief, p. 10), "may never come to be" is inappropriate, speculative and beyond the purposes of PUB 206.01 or RSA 273-A:12 as it pertains to the resolution of disputes. While PUB 206.01 contemplates declaratory rulings, it requires a "clear and concise statement of the facts giving rise to the petition," something currently missing and not subject to description until the arbitrator shall have rendered his decision.
6. It GRANTED the City's requested relief to DISMISS the Union's Request for Declaratory Ruling for lack of jurisdiction.

So ordered.

Signed this 24th day of July, 2002.


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard W. Roulx and E. Vincent Hall present and voting.