

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Professional Firefighters of Salem
Local 2892, IAFF, AFL-CIO, CLC

Complainant

v.

Town of Salem

Respondent

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Case No. F-0116-26

Decision No. 2002-086

PRE-HEARING DECISION and ORDER

BACKGROUND

The Professional Firefighters of Salem ("Union") filed an unfair labor practice complaint against The Town of Salem on May 13, 2002. The Union alleges in their complaint that the Town gave orders directly to two firefighters compelling them to work assignments that differed from the work schedule provided within the parties' collective bargaining agreement (CBA). The union alleges that the actions undertaken by the Town to accomplish this constitute a unilateral change in working conditions and a refusal to bargain violative of RSA 273-A:3 and RSA 273-A:5, I (e), (g) (h) and (i).

The Union also alleges a separate set of facts depicting actions undertaken by the Town that it says constitutes direct dealing with a unit member and also a failure to negotiate in good faith. The actions complained of involve the Town allegedly initiating a civil suit against a unit member to obtain reimbursement for funds paid to the member previously receiving Workers' Compensation payments. The Union alleges in this second claim that the Town's actions violate RSA 273-A:5, I (e), (g), (h) and (i) as well as RSA 273-A:3.

The Union seeks relief in the form of a finding that the Town committed an unfair labor practice, an order that the Town to cease and desist from such actions as alleged.

The Town first filed a Motion for Leave to File Late Answer on July 3, 2002, some fourteen days after said answer was due citing internal routing dysfunctions from the Town Manager's office to that of its legal counsel. This filing was done without the consent of the Union and the Union filed its own Motion for Default against the Town and its Objection to the Town's late filing. Beyond these procedural efforts, the Town filed its Answer on July 3, 2002 with the PELRB. In its answer to the first situation alleged in the Union's complaint, the Town asserts that it did not violate the statutory provisions alleged or fail to negotiate in good faith in reassigning two firefighters to a work schedule, because neither firefighter had been medically cleared to work as a firefighter at the time of reassignment.

Regarding the second situation alleged by the Union in connection with the initiation of a civil suit against an individual firefighter, the Town admits that it sued a firefighter for breach of an individual contract with that firefighter that arose from a settlement agreement between the Town and that individual firefighter for payment of a disputed debt.

For its part, the Town states that the separate situations combined by the Union in its complaint are matters that should be severed, one from the other, for purposes of hearing and that the second situation giving rise to the Union's complaint is not timely made and is barred by the statute of limitations. Further, the second situation regarding the civil suit presents an issue over which the PELRB has no jurisdiction. The Town seeks to have the matters separated for hearing and further requests that each be dismissed by the PELRB.

PARTICIPATING REPRESENTATIVES

For the Complainant: John S. Krupski, Esquire

For the Respondent: Michael S. Elwell, Esquire

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether the actions undertaken by the Town in assigning the two firefighters named in the complaint violated the provisions of RSA 273-A:3 or RSA 273-A; 5, I (e), (g), (h), and (i) ?
2. Whether or not the PELRB has jurisdiction over the second situation regarding the initiation of a civil suit against a firefighter on an individual contract with that firefighter?
3. Whether the actions undertaken by the Town in initiating a civil suit against the named firefighter in the second situation related in the Union complaint violated the provisions of RSA 273-A:3 or RSA 273-A; 5, I (e), (g), (h), and (i) ?

WITNESSES

For the Complainant:

1. Paul Parisi, Deputy Chief
2. John VanGelder, Firefighter
3. Erik Korb, Firefighter
4. Jeffrey Twone, Town Manager
5. Arthur E. Barnes, Fire Chief
6. Francis Enos, Firefighter
7. Dennis Boisvert, Firefighter

For the Respondent:

1. Jeff Twone, Town Manager
2. Arthur Barnes, Fire Chief
3. Kevin Breen, Assistant Fire Chief
4. Mary Donovan, 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

Joint Exhibit:

1. Current Collective Bargaining Agreement
2. Documentation related to Arbitration # AAA 11-390-00374-2 (including pleadings, exhibits and decision)

For the Complainant:

1. Previous collective bargaining agreements
2. All documents submitted with the Complaint of improper labor practice
3. Grievance documents

For the Respondent:

1. Scheduling and assignment documents
2. TAD documents
3. Physician and Workers' Compensation documents regarding disabilities
4. Contract with Firefighter VanGelder
5. VanGelder checks
6. District Court pleadings, exhibits and decision

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

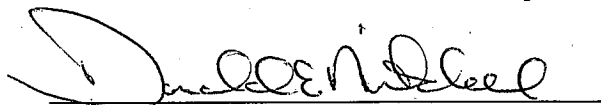
The time being set aside for the combined hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

DECISION AND PRE-HEARING ORDER

1. Upon learning of the participation of a potential witness, namely Kevin Breen, Hearing Officer Mitchell informed the parties that in years prior he was involved in litigation, in a representative capacity as counsel to this individual who brought suit against the certain members of its police department and the Town of Salem, *respondeat superior*, approximately ten years ago. The purpose of this revelation was to inform the parties and to allow either to request his recusal from sitting as the Hearing Officer in this matter. Either party may file an appropriate motion within seven (7) days of the date of this order if it seeks to have Attorney Mitchell recused. If no such motion is filed within that time period, no such motion shall thereafter be filed except for exceptionally good cause shown so that this matter may proceed without unnecessary delay.
2. The Union has agreed to withdraw its Motion for Default and its Objection to Filing of Late Answer filed by the Town. In turn, the Town has agreed to waive the application of the statute of limitations asserted in Paragraph #15 of its Answer.

3. The Complainant has indicated an interest in amending its complaint filed on June 4, 2002 and shall have leave to do so on or before August 7, 2002. Thereafter, the Respondent Town shall file any additional answer or objection to the Union's Amended complaint on or before August 17, 2002. Each party shall notify the other of such filings by forwarding a copy of their respective additional pleadings.
4. The parties shall meet or otherwise confer to review the proffered exhibits listed above and to exchange copies of any outstanding documents which are not in the possession of the other.
5. The parties shall also meet or otherwise confer for the purpose of discussion such facts as may be mutually agreed to and shall submit a joint statement of said agreed facts prior to presentation of the Town's case at the hearing. It is understood by the parties that any such stipulated facts as appear within that agreed statement shall be accepted by the PELRB as evidence and no additional evidence need be submitted to establish the existence or non-existence of that fact
6. 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 hearing date indicated below. The parties shall also 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.
7. 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.
8. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties, on both the scheduling assignment matter and the civil suit matter, is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, September 26, 2002 beginning at 9:30 A.M.

Signed this 29th day of July, 2002



Donald E. Mitchell, Esq.
Hearings Officer