

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire

Petitioner

v.

City of Manchester Public Library

Respondent

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Case No. M-0786-1

Decision No. 2002-110

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Teamsters Local 633 of New Hampshire, (hereinafter referred to as the "Union") filed a Complaint of unfair labor practice against the City of Manchester (hereinafter referred to as the "City") on August 9, 2002 with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB"). The Union alleges in its complaint that, (1) the City was ordered by the PELRB on April 4, 2002 to negotiate with the Union as the exclusive bargaining representative for certain library employees, (2) that it was requested to initiate bargaining by the Union on or about July 3, 2002 and had refused to do so causing the Union to file the instant complaint. The Union requests that the PELRB compel the City to begin negotiations.

On August 23, 2002 the City filed an answer that included a motion to dismiss the Union's complaint with the PELRB. In short, the City admits that it has refused to bargain and begin negotiations but states that it was entitled to refuse to negotiate because it had filed an appeal of the PELRB's order to negotiate and a motion to stay with the New Hampshire Supreme Court on June 5, 2002. The Supreme Court denied the City's motion to stay and accepted the City's appeal on August 19, 2002. The City requests that the PELRB dismiss the Union's complaint on the basis of mootness.

On August 30, 2002 the Union filed its Objection to the City's Motion to Dismiss. The Union asserts that a five month long delay in negotiations prejudices the employees who were certified as a bargaining unit and that to the date of the filing of its Objection to the City's Motion to Dismiss the City had not contacted the Union to begin negotiations despite several Union requests to do so over that period of time.

On September 5, 2002 the City filed a response to the Union's Objection to the City's Motion to Dismiss that it entitled a "replication" and which is accepted simply as an amendment to its initial answer and motion to dismiss. In this document the City makes certain new allegations of fact and also represents that the parties have scheduled to begin bargaining on September 24, 2002.

On September 11, 2002 the Union filed its supplemental objection to what is being taken by the PELRB to be an amended Answer and Motion to Dismiss. The Union reasserts the basis of its original objection and responsively added that the City made its offer to negotiate conditional on the Union withdrawing its complaint of unfair labor practice against the City and that the Union did not agree to do so. The Union requests that the September filing by the City be denied.

At the Pre-Hearing Conference, the parties agreed on two issues as described in the parties' pleadings filed to date that involved the dismissal for mootness raised by the City and the merits of the Union's unfair labor practice complaint. The City indicated that there was a third issue involving the jurisdiction of the PELRB. The Hearing Officer heard from both parties on this subject and accepted a request from the Union, that the City more specifically express this argument in writing, deeming it not to have been sufficiently raised in the City's pleadings on file beyond a general reference on an office form used by the PELRB known to the parties as a "Pre-Hearing Worksheet".

PARTICIPATING REPRESENTATIVES

For the Complainant: John D. Burke, Esq., Counsel to Teamsters Local 633

For the Respondent: David A. Hodgen, Chief Negotiator or Daniel Muller, Esq.

ISSUES*

1. Whether or not the Union's Complaint should be dismissed as moot?
2. Whether the actions or inaction of the City of Manchester following the order of the PELRB to negotiate violates RSA 273-A:5, I(e)?
3. Whether or not any fees or costs made necessary to these proceedings should be charged against either party and awarded to the other party?

* It is understood that there may be an additional issue involving the jurisdiction of the PELRB to undertake additional proceedings or issue additional orders in this matter because of a pending appeal of a previous order of the PELRB.

WITNESSES

For the Complainant:

1. Thomas D. Noonan, Teamster Representative, Local 633
2. John D. Burke, Esq., Counsel to Teamsters Local 633
3. David A. Hodgen, City's Chief Negotiator

For the Respondent:

1. David Hodgen, Chief Negotiator
2. John D. Burke, Esq., Counsel to Teamsters Local 633

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 a 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 Complainant:

1. PELRB Certification of Representative and Order to Negotiate, 4/4/2002
2. Letter from Noonan to Hodgen requesting bargaining, 3/26/02
3. Letter from Noonan to Hodgen requesting bargaining, 4/12/02
4. Hodgen letter responding to Noonan, 4/17/02
5. Letter from Noonan to Hodgen requesting bargaining, 7/3/02
6. Hodgen letter responding to Noonan, 7/8/02
7. Unfair Labor Practice Complaint, Case No. M-0786-1, signed 7/29/02
8. New Hampshire Supreme Court denial of City's Motion to Stay, 8/19/02

For the Respondent:

1. Letter from Noonan to Hodgen, 11/28/01
2. Letter from Hodgen to Noonan, 11/30/01
3. Letter from Hodgen to Noonan, 3/28/02
4. Letter Hodgen to Noonan, 8/29/02
5. Letter Noonan to Hodgen, 9/3/02

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 on all pending motions and the merits of the complaint 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 within ten (10) days of the date of this Order.

DECISION AND PRE-HEARING ORDER

1. The parties shall meet and confer on or before September 24, 2002 for the purposes of discussing the several issues alleged in the Union's Complaint and to consider either a stipulated finding of unfair labor practice, the withdrawal of this complaint, or the dismissal of this complaint.
2. The City shall file an amended motion to dismiss the Union's complaint, on or before September 30, 2002 detailing its argument that the PELRB lacks specific jurisdiction to proceed with this matter. The Union has reserved its right to further amend its objection to the City's expected amendment to its motion to dismiss, but based upon preliminary representations by the City as to the position it seeks to maintain the Union is not required to expand upon its previous responses to the City's pleadings to date.
3. On or before October 10, 2002 the Union's counsel, as the moving party, shall inform the PELRB as to whether there shall be any further administrative action undertaken by the PELRB as a result of the discussion anticipated to take place as described in Paragraph #1, above. If, so, a jointly executed document shall be filed with the PELRB confirming the mutual request of the parties.
4. In the event that the parties are otherwise unable to resolve their dispute without the need for further hearings before the PELRB, the parties' representatives shall notify each other of any changes to their final Witness and Exhibit List.
5. The Union's counsel has been seasonably notified of the City's intent to call him as a fact witness to provide testimony before the PELRB and shall make appropriate arrangements to have another individual available to act as the

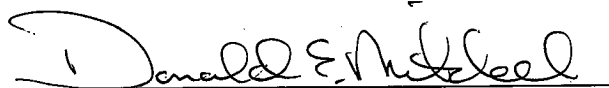
Union's representative during his testimony and to make such inquiry of the Union's counsel on cross-examination, or otherwise, as may be necessary. It is noted that the Union reserves its objections regarding the relevancy of its counsel's testimony.

6. The party representatives shall also 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 shall be filed by the parties within ten (10) days of the date of this order.

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 Thursday, October 24, 2002 beginning at 9:30 AM.

So Ordered

Original Signed on the 20th day of September, 2002
Corrected signed this 3rd day of October, 2002



Donald E. Mitchell, Esq.
Hearings Officer