



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

City of Lebanon	*	
	*	
	*	
	*	
Complainant	*	Case No. A-0419-19
	*	
v.	*	
	*	Decision No. 2002-116
	*	
A.F.S.C.M.E.	*	
	*	
Respondent	*	
	*	

PRE-HEARING DECISION and ORDER

BACKGROUND

The City of Lebanon, (hereinafter referred to as the "City"), filed a complaint with the Public Employee Labor Relations Board, (hereinafter referred to as the "PELRB") on August 23, 2002 charging the American Federation of State, County and Municipal Employees, Council 93, (hereinafter referred to as the "Union") with failing to bargain in good faith by refusing to attend contract negotiation sessions at any scheduled time other than during normal working hours. The City alleges that this refusal violates New Hampshire law, specifically RSA 273-A:5, II(d) which makes a failure to bargain with the public employer in good faith an unfair labor practice.

A "Notice of Filing" was forwarded to the Respondent, in the person of Jack McMath, NH Coordinator for AFSCME Council #93 on August 23, 2002 and a "Notice of Pre-Hearing Conference" was forwarded to both parties by the PELRB on September 12, 2002.

The Union did not file a timely answer to the City's original complaint and none was on record with the PELRB through the date of the Pre-Hearing Conference. There was no reason provided by the Union for its failure to file an answer in a timely manner. There was also no motion made by the City to either postpone the Pre-Hearing

Conference, pending submission of an answer, or a motion for default against the Union. The Hearing Officer inquired of both parties as to the exhibits and testimony to be offered by each. The parties attempted to settle their dispute and failing to do so the Hearing Officer proceeded to complete the conference. The Hearing Officer also took administrative notice of RSA 273-A;5, II (d) and indicated to the parties that the PELRB would also take administrative notice of any Statute, PELRB Decision, or New Hampshire Supreme Court decision contemplated as additional evidence by either party upon their reference to same.

PARTICIPATING REPRESENTATIVES

For the Complainant: Marilyn (Mitzi) R. Baron, Human Resources Consultant

For the Respondent: Daniel Cocuzzo, Esq., Associate General Counsel,
AFSCME
John (Jack) McMath, New Hampshire Coordinator
AFSCME

ISSUE FOR DETERMINATION AT HEARING

1. Whether the refusal of the Union to meet, for purposes of negotiating a collective bargaining agreement with the City, at times other than occurring within the normal daily business hours constitutes a lack of good faith bargaining?

WITNESSES

For the Petitioner:

1. Michael Lavalla, Public Works Director
2. Marilyn ("Mitzi") Baron

For the Respondent:

1. Michael Hammond, Local President
2. John ("Jack") McMath, New Hampshire Coordinator, AFSCME
3. David Moore, Negotiating team member – Operations & Maintenance
4. Scott Pourier, Negotiating team member – Water Department
5. Bruce Blackmore, Negotiating team member – Wastewater Treatment
6. Robert Barden, Negotiating team member – Cemetery Division
7. Edward DeNike, Negotiating Team member – Landfill Division

Both parties reserve the right to amend their List of Witnesses in conformity with administrative Rule Pub 203.01 (b). Each shall also forward a copy of any modified Witness List to the PELRB at the same time. 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: The parties have agreed upon the submission and acceptance into evidence of the following:

1. Parties' Collective Bargaining Agreement (CBA), effective 1998-2002
2. Proposed Ground Rules

For the Petitioner:

1. Letter from Lavalla to Baron, dated July 25, 2002

For the Respondent:

1. None other than as indicated as Joint Exhibits

Both parties reserve the right to amend their List of Exhibits in conformity with the date stated above 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 Administrative Rule 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 set aside for a hearing of this matter is one half 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.

PRE-HEARING DECISION AND ORDER

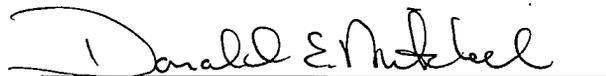
1. The Union shall file its answer, pursuant to Pub 203.01, with the PELRB no later than Tuesday, October 1, 2002 and simultaneously forward a copy of the same to the City representative.

2. Within fourteen (14) days of the date of this Order, the Union shall forward a list of all witnesses to the City representative that it intends to call at the evidentiary hearing. The Union having added five witnesses to its planned list at the Pre-Hearing Conference, the Hearing Officer informed the Union of the Board's ability to disallow redundant testimony in light of the issue at hand.
3. The City shall file an original Pre-Hearing Worksheet, properly signed, with the PELRB no later than Tuesday, October 1, 2002
4. The party representatives shall 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.
5. 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 to be conducted at the Office of the Public Employee Labor Relations Board on November 7, 2002 beginning at 9:30 A.M.

SO ORDERED.

Signed this 27th day of September 2002.



Donald E. Mitchell, Esq.
Hearing Officer

Distribution:

Ms. Baron
Mr. McMath
Attorney Cocuzzo