

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Seabrook

Complainant

v.

Local 1984 SEIU, SEA
Seabrook Employees Association

Respondent

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Case No. M-0591-38

Decision No. 2001-120

PRE-HEARING DECISION and ORDER

BACKGROUND

The Town of Seabrook (hereinafter referred to as the "Town") filed an unfair labor practice charge on August 5, 2002 alleging a breach of the parties' collective bargaining agreement through interference with the Town's exercise of management rights and by interfering and discriminating against non-Union members. The Town also bases its complaint on certain violations of RSA 273-A:5 I (a), (c), (f) and (g). It alleges that the Union and its President, Cora Stockbridge, have engaged in a pattern of conduct that has restrained, coerced and otherwise interfered with public employees in the exercise of rights under the Public Employee Labor Relations Act and attempted to cause the Town to discriminate against a public employee for her non-membership in the Union, although a member of the bargaining unit represented by the Union. The Town also alleges that the Union has interfered with the training of a particular unit member who is not a member of the Union. Further, the Town alleges that the Union has refused to participate in any meetings convened by the Town in fulfillment of its administrative duties. Also, the Town alleges that the Union, acting through Ms. Stockbridge has discriminated against bargaining unit members who are not members of the Union in the prosecution of grievance administration. Lastly, the Town alleges that the Union has failed to fairly represent one or more members of the bargaining unit and has discriminated against a unit member to coerce Union membership.

The Union filed its Answer with the PELRB on August 19, 2002. It asserts that the Town's allegations, as described in the complaint are vague and non-specific. The Union requests interim relief in the form of an order of the PELRB requiring the Town to provide a more detailed statement identifying the unnamed bargaining unit member or members and to specify in greater detail the incidents of conduct that form the basis for the allegations contained in the complaint.

For its part, the Town requests that the PELRB find the Union has committed unfair labor practices and issue cease and desist orders specifically terminating the alleged practices. Further, the Town requests that the PELRB order the Union to discharge its responsibility to fairly represent members of the bargaining unit regardless of union membership status. Lastly, the Town requests an order from the PELRB to assess reasonable costs, including attorney fees, incurred in bringing this complaint.

A Pre-Hearing Conference was conducted on October 2, 2002 at which time the parties discussed several procedural aspects of this matter with the Hearing Officer. The parties expressed their intent to make application to the PELRB for depositions of certain witnesses to be taken prior to the conduct of the hearing on the merits

PARTICIPATING REPRESENTATIVES

For the Respondent: Robert D. Ciandella, Esquire

For the Complainant: Jeffrey L. Brown, Union Field Representative

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Union breached any provision of the parties' collective bargaining agreement ("CBA") by interfering with the Town's exercise of management rights or by interfering and discriminating against members covered by the CBA who are not members of the Union?
2. Whether the Union committed acts or engaged in a pattern of conduct that violated the Public Employee Labor Relations Act (RSA 273-A) as constituting restraint, coercion or interference with public employees in the exercise of their rights under the statute?
3. Whether the Union, by its actions, attempted to discriminate or cause the Town to discriminate against a public employee based upon that employee's non-membership in the Union?

4. Whether the Union committed an unfair labor practice by any alleged actions undertaken by its representatives that constituted an abdication of the Union's responsibilities under the statute to fairly represent the members of the bargaining unit regardless of an employee's membership status in the Union?

WITNESSES

For the Complainant:

1. E. Russell Bailey, Town Manager
2. Warner Knowles, Water Division Superintendent
3. Philippe Maltais, Water and Sewer Department employee
4. Lynn Willwerth, Water and Sewer Department employee

For the Respondent:

1. Cora Stockbridge, President, Seabrook Employees Association
2. Karen Knight, Member of the Board of Selectmen
3. Oliver Carter, Member of the Board of Selectman
4. Ralph Marshall, Union member
5. E. Russell Bailey, Town Manager
5. Lynn Willwerth, Water and Sewer Department employee
6. Robert Knowles, Water and Sewer Department employee
7. Brian Mitchell, SEIU, SEA
8. Teresa Donovan, former SEA representative

Both parties reserve the right to amend their List of Witnesses in conformity with Administrative Rule Pub 203.01 (b) or as may be amended 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

The PELRB will take Administrative Notice of the following:

1. The parties' current collective bargaining agreement (CBA)
2. PELRB record in Case No. M-0591-30 (if deemed relevant and admissible)
3. PELRB record in Case No. M-0591-28 (if deemed relevant and admissible)

For the Complainant:

1. Letter from Mitchell to Bailey, 7/3/02 Union Grievance, dated
2. Statement of Warren Knowles, 7/9/02
3. Statement of Maltais, 7/9/02
4. Letter from Richard Molan to Cindella, 7/13/00
5. Grievance – Stockbridge to Knowles, 4/13/00
6. Letter from Stockbridge to Knowles, 4/5/00
7. Grievance filed by Stockbridge, 3/17/98
8. Documents and decision in PELRB Case No. M-0591-30, 8/5/98
9. Documents and decision in PELRB Case No. M-0591-28

For the Respondent:

1. Unknown at the present time

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 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 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 thirty (30) days from the date of this Order.

ORDER

1. The Town shall file an amended Complaint providing additional details of specific acts or omissions alleged to have been undertaken by the Union and its representatives that form the basis for its allegations of violations contained in its original complaint. The amended Complaint will also include any alleged acts or omissions that have occurred subsequent to the original Complaint. This amended Complaint shall be filed with the PELRB on or before October 21, 2002. A copy of

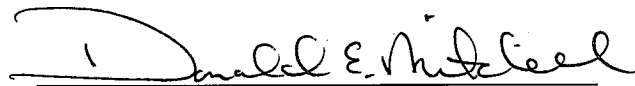
said filing shall simultaneously be forwarded to the Union Field Representative, now known to be Jeffrey L Brown.

2. The parties have indicated their intent to file an application with the PELRB requesting the depositions of certain witnesses. The Town shall file its application on or before October 21, 2002 and the Union shall file its application on or before October 31, 2002.
3. The Union shall file its Answer to the Town's Amended Complaint and any objection to the Town's application for depositions on or before October 31, 2002. The Town shall file any objection it may have to the Union's application for depositions on or before November 8, 2002. Copies of all filings shall be simultaneously forwarded to the opposing representative.
4. Attorney Ciandella and Mr. Brown shall meet and confer, in their respective capacities as representatives of their party, on or before November 15, 2002 for the purpose of narrowing the issues, stipulating to uncontested facts, exchanging outstanding documents or identifying modifications to their witness and exhibits lists. Following that meeting and at least five (5) days prior to the scheduled evidentiary hearing on the merits of the Town's allegations, the representatives shall execute and file with the PELRB a Joint Stipulation of Uncontested Facts to which no further evidence need be offered at the evidentiary hearing and a List of Joint Exhibits, the admission into evidence of which neither party objects. No foundation need thereafter be provided, at hearing, to allow their admission into evidence.
5. The parties shall exchange any documents reasonably requested by the opposing party no later than December 2, 2002. Should the existence of any additional documents later be revealed in depositions or later be identified by either party it shall be provided upon request. In the event that either party has a good faith belief that he has not received any such document, that representative shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to the opposing representative who shall, upon receipt, provide the document or inform the PELRB in writing of his reasons for not providing the document to the requesting party.
6. The party representatives shall also confer to discuss all exhibits planned for introduction at hearing, and to arrange to pre-mark any exhibits, for identification, prior to the time of hearing and arrange to have sufficient copies of all exhibits available for distribution at the hearing as required by Pub 203.02. It is understood that exhibits that are to be used solely for purposes of impeachment may not be marked prior to the hearing.
7. No later than the date of submission of the Union's application for depositions on October 31, 2002 the representatives shall communicate and establish a proposed

schedule for depositions. Depositions of any and all witnesses as may be approved by the PELRB shall be completed on or before December 13, 2002.

8. The parties are requested to submit a legal memorandum addressing the issue: Does the Town have standing to file a complaint alleging that the Union has failed to fairly represent members of the bargaining unit? The parties may agree to submit these documents at any time provided, however, that such memoranda shall be filed no later than January 6, 2003.
9. The party representatives shall forward any final amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB on or before December 20, 2002.
10. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than December 20, 2002.

Unless otherwise ordered as a result of any subsequent filings, an evidentiary hearing between the parties is to be conducted at the Office of the Public Employee Labor Relations Board on January 16, 2003 beginning at 9:30 A.M.



Donald E. Mitchell, Esq.
Hearings Officer

So ordered.
Signed this 3rd day of October, 2002

Distribution:

Robert D. Ciandella, Esquire
Jeffrey L. Brown, Union Field Representative, SEIU, SEA