



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Hampton	*	
	*	
	*	
Complainant	*	Case No. P-0719-17
	*	
v.	*	
	*	Decision No. 2002-122
Hampton Police Association	*	
	*	
	*	
Respondent	*	

PRE-HEARING DECISION and ORDER

BACKGROUND

The Town of Hampton (hereinafter referred to as the "Town") filed unfair labor practice charges on August 19, 2002 pursuant to RSA 273-A:5 II (f) alleging that the Hampton Police Association (hereinafter referred to as the "Association") breached the Collective Bargaining Agreement ("CBA") by not following the grievance procedure contained in the parties CBA when proceeding to demand arbitration when there was a grievance step requiring an appeal to the Board of Selectmen. The Town seeks relief in the form of actions by the PELRB that would result in the Association's withdrawal of its Demand for Arbitration, the participation of the parties in an appeal before the Board of Selectmen and reimbursement of expenses and costs incurred by the Town associated with either the demand for arbitration of the instant Complaint.

The Union filed its answer on September 10, 2002 wherein it asserts that the Town did not meet the appeal schedule requirements contained within the parties' CBA regarding the appeal step involving the Board of Selectmen. The Association's Answer raises an issue of the PELRB's jurisdiction to hear an issue of "Procedural Arbitrability", so-called. It proceeds to then request that the PELRB deny the Town's prayers for relief and order the Town to participate, expeditiously, in arbitration and comply with the Rules of the American Arbitration Association and the parties' CBA.

A Pre-Hearing Conference was conducted on October 9, 2002 at which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Complainant: Elizabeth A. Bailey, Esquire

For the Respondent: J. Joseph McKittrick, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

1. Does the PELRB have jurisdiction over the subject matter of this case?
2. Did the Association's action in filing for arbitration, at the time that it did, constitute a breach of the grievance provisions of the parties' collective bargaining agreement and the commission of an unfair labor practice in violation of RSA 273-A:5 II(f)?

WITNESSES

For the Complainant:

1. James Barrington, Town Manager
2. William Wrenn, Police Chief
3. Steve Henderson, Association President

For the Respondent:

1. Steven Henderson, Association President

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

For the Complainant:

1. Collective Bargaining Agreement, dated April 1, 2000
2. Letter from Barrington, 7/3/02
3. Letter from Henderson, 7/5/02
4. Letter from Barrington, 7/19/02
5. Letter from Barrington, 7/26/02
6. Letter from Henderson to Barrington, 8/4/02

7. Letter from Barrington to Henderson, 8/7/02
8. Union's Demand for Arbitration, 8/12/02

For the Respondent:

1. None identified at time of Pre-Hearing

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

In the event that this matter proceeds to the merits and the parties have not filed a stipulation as to all relevant and material facts, the time being set aside for an evidentiary hearing is three hours. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB within fourteen (14) days of the date of this order.

DECISION

1. The parties have indicated that they will continue to attempt settlement of this matter. They further have represented that the jurisdictional issue raised by the Respondent can be considered by the PELRB upon their submission of their respective Memorandum of Law and any jointly submitted exhibits. The parties waive oral argument on the jurisdictional issue. Therefore, on or before October 23, 2002 the parties shall file their briefs with the PELRB. The PELRB shall thereafter issue a decision on the matter of jurisdiction indicating whether or not a subsequent hearing on the merits shall be convened at the PELRB.
2. In the event that the jurisdictional issue is not dispositive of the matter, the parties shall meet and confer on or before November 8, 2002 for the purpose of drafting an agreed Stipulation of Facts regarding the alleged breach and statutory violation.
3. In the event that the parties agree to all material and relevant facts and so stipulate, then the parties shall both execute the "Stipulation of Facts" and the representative for the City shall file the document with the PELRB immediately.
4. Upon receipt of the parties' Stipulation of Facts and any Exhibits, the evidentiary record shall be deemed closed and a hearing for the purpose of oral argument by

each representative shall be conducted on the date appearing at the end of this Order in lieu of an evidentiary hearing.

5. In the event that the parties cannot agree as to all relevant facts to be included in their stipulated statement, then they shall memorialize those facts upon which they can stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing scheduled below.
6. If there is to be an evidentiary hearing, the party representatives shall exchange their final Witness and Exhibit lists and each shall file a copy of their respective list to the PELRB no later than five (5) days prior to the date of hearing scheduled below.
7. The parties shall exchange any outstanding documents not already exchanged and reasonably requested by the opposing representative no later than fourteen (14) days prior to the scheduled evidentiary hearing. In the event that either party has a good faith belief that he or she has not received any such document, the requesting 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 for his reasons for not providing the document to the requesting party.
8. 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. It is understood that exhibits that are to be used solely and exclusively for purposes of impeachment may not be jointly marked.
9. 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, and failure of the parties to agree to submit the case on documentary evidence, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on November 26, 2002 beginning at 9:30 A.M.

Signed this 10th day of October, 2002



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:
Elizabeth A. Bailey, Esquire
J. Joseph McKittrick, Esquire