

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Town of Hampton	*	
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	*	
Complainant	*	
	*	
v.	*	Case No. P-0719-17
	*	
Hampton Police Association	*	Decision No. 2002-135
	*	
Respondent	*	
	*	

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ORDER DIRECTING ARBITRATION

The Board, meeting at its offices in Concord, New Hampshire, on November 19, 2002, took the following actions:


1. It reviewed the unfair labor practice (ULP) complaint filed in this matter on August 19, 2002, the Association's answer filed on September 10, 2002, the pre-hearing decision and order dated October 10, 2002 (Decision No. 2002-122) and the parties' collective bargaining agreement (CBA) for the period April 1, 2002 to March 31, 2003.
2. It studied the memoranda of law timely filed by the parties' counsel, respectively, on October 23, 2002 on issues surrounding arbitrability and the PELRB's role in resolving such disputes.
3. It examined the contract grievance procedure (Article XXIX), in particular Section 5 (A) which provides, in pertinent part, "If the Association is not satisfied with the disposition of its grievance or if no written decision has been rendered within twenty-one (21) calendar days (i.e., Monday through Friday) after filing with the Board, the Association may submit, in writing, a request to the American Arbitration Association to appoint an arbitrator...." and found that said request was dated and made on or about July 5, 2002 (ULP, Tab 3 and pleading, para 6). Thereupon, the Board calculated that the 21 day period would have expired on or about close of business on August 2, 2002.

4. It found that the Association's request for grievance arbitration was not made until on or about August 12, 2002, more than 21 days after July 5, 2002, and at a time when the Association was neither satisfied with the disposition of the grievance by the Board of Selectmen nor had the selectmen rendered such a decision within the requisite 21 days provided in CBA Article 29, § 5 (a), noting also that the foregoing quoted standard of Article 29 § 5 (a) is disjunctive such that failure of the selectmen to satisfy either of its provisions is grounds for the Association to proceed by requesting arbitration
5. It examined the CBA, notably Article XXIX, §1 which defines "grievance" as a "written dispute, claim or complaint...which arises under and during the terms of this Agreement...limited to matters of interpretation or application of specific provisions of this Agreement...." It also examined Article IV, Section 3 of the CBA, the "Management Rights" clause, which provides, in pertinent part, "All disciplinary actions such as but not limited to suspensions and discharges shall be specifically subject to the grievance procedure as set forth in Article 29...." The suspension referenced in Town Manager Barrington's letter of July 3, 2002, to Steve Henderson, President of the Association, falls within the definition of Article XXIX, § 1 of the CBA and within the circumstances reserved to the grievance process under Article IV, § 3 of the CBA.
6. It reviewed prior case law of precedential value providing that it cannot be said with the requisite "positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." Appeal of Westmoreland School Board, 132 NH 103, 105 (1989). Under the "positive assurance" test or standard, "a presumption of arbitrability exists...[and] only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail." See, Westmoreland 132 NH 103 at 105, Appeal of AFSCME Local 3657, Londonderry Police, 141 NH 291, 293 (1996) and Appeal of Hillsborough County, Docket No. 99-720 (Slip. Op., November 1, 2002).
7. It found that it is within the powers and mandate of the PELRB to determine matters of arbitrability as set forth in Nashua School District v. Murray, 128 NH 417 at 419 (1986) and Appeal of State, 147 NH 106 at 109 (2001). Thus, and consistent with the foregoing, it found the instant case to be both procedurally (within the definition of Article 29 Section 5(A) and the time limits set therein) and substantively (within the definitions found at Article 29, Section 1 and Article 4, Section 3) arbitrable.
8. Based on the foregoing, it directed the following: (1) the parties shall proceed directly to arbitration as contemplated in the contract, (2) any moving party seeking to proceed to arbitration may provide a copy of

this decision to the American Arbitration Association as evidence of the timeliness of such a request, (3) nothing in this order is intended to preclude the parties from resolving this dispute prior to the assigned arbitration date by any means, compromises or other methods mutually acceptable to both of them, (4) the pending proceedings pending before the PELRB set for November 26, 2002 are hereby postponed as provided herein, (5) the Association shall provide the PELRB with a copy of the arbitrator's decision within ten (10) days of the date thereof, (6) if neither party requests further proceedings before the PELRB within thirty (30) days of the date of the arbitrator's decision, this matter shall thereafter be dropped from the PELRB's docket of cases, and (7) if no report on the progress of this case is received by the PELRB within twelve (12) months of the date hereof, this matter shall be considered stale and administratively dismissed from the PELRB's docket of cases.

So ordered.

Signed this 21st day of November, 2002.

  
BRUCE K. JOHNSON  
Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding. Members E. Vincent Hall and Richard Roulx present and voting.