



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Seabrook Employees Association
Local 1984 SEA/SEIU

Complainant

v.

Town of Seabrook

Respondent

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Case No. M-0575-14

Decision No. 2002-142

PRE-HEARING DECISION and ORDER

BACKGROUND

The Seabrook Employees Association, Local 1984 SEA/SEIU (hereinafter referred to as the "Union") filed an unfair labor practice charge on October 2, 2002 alleging that the Chairman of the Board of Selectmen initiated direct contact with a bargaining unit member, who had a grievance pending at the time, on two separate occasions without dealing through the Union's representative. The Union asserts that such action constitutes a breach of the parties' collective bargaining agreement and violates RSA 273-A:5, I (e) and (h). The Union seeks a determination of the PELRB that the Town of Seabrook (hereinafter referred to as the "Town") committed an unfair labor practice and that the Town be ordered to cease and desist from directly dealing with grievants who are bargaining unit members. The Union also seeks reimbursement for its reasonable costs of representation and fees necessary to pursue this action.

The Town filed its Answer with the PELRB on October 18, 2002. It generally denies the Union's allegations and leaves the Union to its proof that the Chairman of the Board of Selectmen undertook the actions alleged. For its part, the Town requests that the PELRB dismiss the Complaint and award the Town its reasonable attorney's fees.

A Pre-Hearing Conference was conducted on December 4, 2002 at which time the parties discussed several procedural aspects of this matter with the Hearing Officer. The Respondent's counsel indicated that he would file an Amended Answer providing more specific detail with respect to its general denial of certain facts alleged in the Union's complaint in order to assist the PELRB in narrowing the factual issues central to the presentation of evidence at the future hearing and to attempt to eliminate the need, expressed by the Union representative, to subpoena telephone records.

PARTICIPATING REPRESENTATIVES

For the Complainant: Jeffrey L. Brown, Union Field Representative
For the Respondent: Robert D. Ciandella, Esquire

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

Whether the alleged actions of the Chairman of the Board of Selectmen that she directly dealt with a bargaining unit member regarding a pending grievance constitutes a violation of the parties' collective bargaining agreement or constitutes an unfair labor practice in violation of RSA 273-A:5, I(e) or (h)?

WITNESSES

For the Complainant:

1. Cora Stockbridge, President, Seabrook Employees Association
2. Karen Knight, Chairman of the Board of Selectmen
3. Ralph Marshall, Union member and grievant
4. E. Russell Bailey, Town Manager

For the Respondent:

1. E. Russell Bailey, Town Manager
2. Karen Knight, Chairman of the Board of Selectmen

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)

For the Complainant:

1. Telephone message slip, dated 9/23/02
2. Telephone message slip, dated 9/23/02

For the Respondent:

1. None

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 evidentiary 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 Answer with the PELRB that supplements its general denials contained in Paragraph #'s 3, 5, and 6 of its initial Answer within fourteen (14) days of the date of this Order.
2. The Union shall have seven (7) days after the filing of the Town's Amended Answer to consider the necessity to file a request of the PELRB to grant a subpoena to obtain certain telephone records. The Union representative has been informed that the

PELRB may, or may not, grant a subpoena for pre-hearing discovery for such purposes.

3. Attorney Ciandella and Mr. Brown shall meet and confer, in their respective capacities as representatives of their party, on or before January 17, 2003 for the purpose of exchanging outstanding documents or identifying modifications to their witness and exhibits lists.
4. 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.
5. 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 no later than five (5) days prior to the date of the evidentiary hearing.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than January 24, 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 February 11, 2003 beginning at 9:30 A.M.

So ordered.
Signed this 5th day of December, 2002



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:

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