

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees' Association of NH/Local 1984

Complainant

v.

Merrimack County Department of Corrections

Respondent

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Case No. M-0327-28

Decision No. 2002-158

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 November 20, 2002 alleging that the Superintendent of the House of Corrections prepared and distributed a memoranda on two occasions to unit members concerning negotiations and addressed unit members in attendance at a training session regarding negotiations. The Union alleges that such actions violate the public employer's obligation to bargain in good faith as they constitute an attempt by to negotiate directly with unit members away from the bargaining table and without dealing through the exclusive representative. The Union allege that these actions violate RSA 273-A:3, I, RSA 273-A:5, I (a), (e), (g) and (h). The Union seeks a determination of the PELRB that the County of Merrimack (hereinafter referred to as the "County") committed an unfair labor practice and that the County be ordered to cease and desist from directly dealing with employees who are bargaining unit members.

The County filed its Answer with the PELRB on December 4, 2002. Its answer generally admits the Superintendent issued the two memoranda as now alleged by the Union. (The Union raised the existence of the second memorandum at the pre-hearing conference and indicated its intent to file an amendment to its complaint to incorporate this additional act of the Superintendent.) The County also admits that the Superintendent

spoke to employees during a training session. It asserts that none of these actions constitute a violation of the statutory provisions specifically or its general duty to bargain in good faith. The County further asserts that the Union has failed to state a cause of action within its complaint that is sufficient to require any relief from the PELRB. The County indicated that it will file a separate and distinct "Motion to Dismiss" following its receipt of the Union's amended complaint. It otherwise requests that the PELRB deny the Union's complaint.

A Pre-Hearing Conference was conducted on December 30, 2002 at which time the parties discussed several procedural aspects of this matter and the scheduling of a hearing on the merits of the Union's complaint. Respondent's counsel also indicated his intent to present additional witnesses at the hearing on the merits.

PARTICIPATING REPRESENTATIVES

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

For the Respondent: Warren D. Atlas, Esquire

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

Whether the alleged actions of the Superintendent, that she directly dealt with bargaining unit members through her memoranda and spoken comments, constitutes an unfair labor practice in violation of RSA 273-A?

WITNESSES

For the Complainant:

1. Larry Untiet, Local President
2. Michael Burns, Negotiations Team Member
3. Kevin Wyman, unit member attending training session
4. David Perez, unit member attending training session

For the Respondent:

1. Carole A. Anderson, Superintendent, House of Corrections
2. Kathleen T. Bateson, County Administrator

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

Joint Exhibits:

1. Anderson Memorandum, dated 11/14/02
2. Anderson Memorandum, dated 12/4/02

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

ORDER

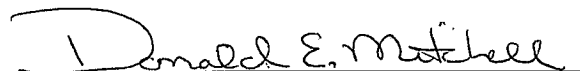
1. The Union shall file its Amended Complaint with the PELRB on or before January 7, 2003.
2. The County shall file its Motion to Dismiss with the PELRB on or before January 14, 2003 and any necessary additional Answer to the Union's Amended Complaint within fifteen (15) days of the Union's filing of same. It is understood that the Respondent need not file an additional answer if it chooses not to do so and that its original answer will serve as a denial of the allegations represented by the Union to relate to the December 4, 2002 memorandum and to constitute the basis of its Amended Complaint.

3. The party representatives shall 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.
4. 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.
5. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than March 1, 2003.
6. All motions shall be heard concurrent with the merits of the Union's complaint.

Unless otherwise ordered as a result of any subsequent filings, an evidentiary hearing between the parties shall be conducted at the Office of the Public Employee Labor Relations Board on March 11, 2003 beginning at 9:30 A.M.

So ordered.

Signed this 31st day of December, 2002



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:

Jeffrey L. Brown, Union Field Representative, SEIU, SEA
Warren D. Atlas, Esquire