

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 3657
Milford Police Department

Complainant

v.

Town of Milford

Respondent

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Case No. A-0480-14

Case No. A-0480-16

Decision No. 2002-159

PRE-HEARING DECISION and ORDER

AFSCME Council 93, Local 3657, on behalf of the certain members of the Milford Police Department, (hereinafter referred to as the "Union") filed an unfair labor practice complaint on October 17, 2002 (Case No. A-0480-14) alleging that the Town of Milford (hereinafter referred to as the "Town"), acting through its employees and agents, including Chief Fred Douglas, has undertaken a course of conduct and taken actions that the Union alleges constitute coercive, disparate and discriminatory conduct against Patrolman Michael Funk who had been a Union witness in previous proceedings before the PELRB. The Union states that the Town's actions violate RSA 273-A:5 I (a), (b), (c), (d), (f) and (g). It seeks relief in the form of a finding of the commission of an unfair labor practice and the issuance of a Cease and Desist Order from the PELRB. The Union also requests that the Order be publicly posted and that it be reimbursed for all costs and expenses necessary to the pursuit of this complaint.

The Town of Milford filed its Answer in a timely manner on November 1, 2002. In response, the Town denies that any actions of the Town or its Police Chief have been directed specifically against Patrolman Funk or that any actions of the Town has constituted coercive, disparate or discriminatory conduct against him. It asserts that any of the alleged actions were undertaken in the normal course of procedure for the Police Department and Town or, in the case of a delayed mailing to him, corrected immediately. For its part, the Town seeks to have the Union Complaint dismissed.

Subsequent to the filing of the Union Complaint, now docketed as Case No. A-0480-14, but prior to the conduct of the pre-hearing conference on this matter, the Union filed an additional complaint with the PELRB on November 6, 2002 and the Town filed its Answer on December 10, 2002, nineteen days after it was originally due and fifteen days after the enlarged time for response was granted, as requested, by the Respondent. This second complaint is now docketed as Case No. A-0480-16.

The Union alleges in its second complaint that the Town and its agents undertook a series of actions against Patrolman Funk that were directed to restrain, coerce and discriminate against Patrolman Funk by the manner in which sick leave policy was applied to him. The Union also alleges that these actions were undertaken by the Town to discourage membership in the Union and in retribution for Patrolman Funk's previous testimony before the PELRB. Further, the Union alleges that the discriminatory manner in which sick leave was administered in Patrolman Funk's instance resulted in the termination of his employment.

The Town answers the allegations contained in this second Union Complaint in a manner generally acknowledging the chronology of events, admitting to the chain of correspondence between Patrolman Funk and the Town, but denying any violation of RSA 273-A: 5, I in the manner by which it applied sick leave policy to Patrolman Funk or by committing any other prohibited action under that statute. Its response generally relates that Patrolman Funk's employment ceased as a result of his exhaustion of sick leave.

As relief, the Union seeks the reinstatement of Patrolman Funk's employment and that he be "made whole" for all wages, monies and other benefits. The Union also seeks a cease and desist order against the Town for conduct violative of RSA 273-A, as alleged. The Town seeks dismissal of both complaints.

A pre-hearing conference was conducted on December 27, 2002 at which both parties were represented. At the suggestion of the Hearing Officer, the representatives discussed consolidation of these two cases, namely Case A-0480-14 and A-0480-16. After substantial explanation of the procedure to be followed in advancing these two cases through to resolution, certain orders have been issued as appear below.

PARTICIPATING REPRESENTATIVES

For the Complainant: Steven Lyons, Staff Representative, AFSCME Council 93

For the Respondent: David McGrath, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

The parties have been granted leave to discuss the issues presented by the allegations in both cases and have agreed to attempt to delineate those issues that they believe are presented by the facts and highlight them for the PELRB.

WITNESSES

For the Complainant:

1. Michael Funk
2. Tim Beers
3. Scott Chovanel
4. Ray Jackson
5. Kevin Maxwell
6. Stephen Toombs

For the Respondent:

1. Lee Mayhew
2. Chief Fred Douglas
3. Captain Winterburn
4. Captain Fortin
5. Sergeant Crane
6. Mary Dickson
7. Brenda Lynch
8. Katie Chambers
9. Ruth Bolduc

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 Union:

1. Parties' Collective Bargaining Agreement, 4/1/99-3/31/02
2. Union Compliant of unfair labor practice, Case No. A-0480-8, dated 9/21/02

3. Dr. Goodman note, dated 1/7/02
4. Mayhew letter to Funk with attachments, dated 2/7/02.
5. Funk memorandum to Board of Selectmen, dated 1/15/02
6. Funk memorandum to The Standard Insurance Company, dated 1/15/02
7. Funk memorandum to Bolduc, dated 1/16/02
8. PELRB Case No. A-0480-11, Decision 2002-080
9. Bolduc letter to Funk, dated 1/30/02
10. Funk memorandum to Board of Selectmen with doctor's note, dated 2/01/02
11. Mayhew letter to Funk with enclosure, dated 2/25/02
12. Funk memorandum to Board of Selectmen, dated 3/7/02
13. Funk memorandum to Board of Selectmen, dated 3/27/02
14. Mayhew letter to Funk, dated 4/3/02
15. Funk memorandum to Board of Selectmen with attachments, dated 4/5/02
16. Mayhew letter to Funk, dated 4/8/02
17. Mayhew letter to Funk, dated 7/3/02

For the Respondent Town:

1. Letter from Leishman to Chief Sexton, dated 4/16/99
2. Note from Funk doctor, dated 4/5/02
3. Family Medical Leave Act documents (to be further specified by source and date)
4. Funk note to Town with doctor's note attached, dated 2/1/02
5. Mayhew letter to Funk with medical certification form attached, dated 2/25/02
6. Funk letter to Town, dated 3/7/02
7. Mayhew letter to Funk, dated 3/26/02
8. Funk letter to Town, dated 3/27/02
9. Mayhew letter to Funk, dated 4/3/02
10. Funk letter to Town with attachments, dated 4/5/02

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 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 this 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 within fourteen (14) days of the date of this Order.

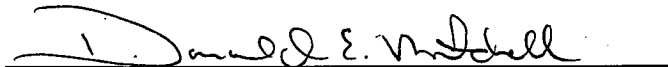
DECISION

1. The parties having consented, Case No. A-0480-14 and Case No. A-0480-16 are consolidated for an evidentiary hearing as scheduled below.
2. The pre-hearing conference on Case No. A-0480-16 scheduled for January 3, 2003 is cancelled as a result of discussion between the parties and the Hearing Officer and the parties representation that they will meet and confer on or before January 17, 2003 to review all planned exhibits and witnesses, to exchange copies of any relevant documents not in the possession of the other and to attempt to come to agreement on the issues presented by the alleged facts.
3. The parties shall compile a jointly executed list of all exhibits that may be entered into evidence without objection and shall file the same with the PELRB on or before January 31, 2003.
4. On or before January 31, 2003 the parties shall file a jointly executed statement of the issues they deem are presented by the alleged facts or, in the event that agreement cannot be reached on the characterization of those issues, each shall submit its own statement of the issues.
5. On or before January 31, 2003 the parties 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 or, if an exhibit cannot be characterized as "joint", then a List of Exhibits indicating those that are consented to, the admission into evidence of which neither party objects. No foundation need thereafter be provided, at hearing, to allow their admission into evidence.
6. The parties shall exchange any documents reasonably requested by the opposing party no later than January 31, 2003. 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.
7. The party representatives shall also 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.

8. The party representatives shall forward any 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 an evidentiary hearing. The party representatives shall meet, or otherwise arrange, to pre-mark any 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.
9. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than ten (10) calendar days prior to the scheduled hearing date.
10. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, February 27, 2003 beginning at 9:30 A.M.

Signed this 31st day of December, 2002.



Donald E. Mitchell, Esq.
Hearings Officer

Distribution:

Wayne Soini, General Counsel, AFSCME
Stephen D. Lyons, Staff Representative, AFSCME
David W. McGrath, Esquire