



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Local 1984 SEIU, SEA	*	
Seabrook Employees Association	*	
	*	
Complainant	*	Case No. M-0575-20
	*	
v.	*	
	*	Decision No. 2003-036
	*	
Town of Seabrook	*	
	*	
Respondent	*	
	*	

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PRE-HEARING DECISION and ORDER

BACKGROUND

Local 1984 SEIU, Seabrook Employees Association (“Union”) filed an unfair labor practice charge on March 6, 2003 alleging that the Town of Seabrook (“Town”) and its agents have pursued a pattern of conduct with the effect of restraining, coercing or otherwise interfering with its employees in the exercise of those employees’ rights provided under RSA 273-A:5, I(a); pursued a pattern of conduct that discriminates in the tenure or terms and conditions of employment of its employees for the purpose of discouraging membership in the employee organization certified to be the bargaining unit’s exclusive representative in violation of RSA 273-A:5,I (c); and pursued a pattern of conduct that discriminates against the bargaining unit’s president and other union members because of complaints filed and testimony given before the PELRB in previous proceedings in violation of RSA 273-A:5,I (d). The Union also alleges that the Town’s unilateral actions regarding wages, benefits and other terms and conditions of work constitutes a refusal to negotiate in good faith in violation of RSA 273-A:5,I (e), and (i); and that the actions of the Town that constitute the alleged acts appearing in the Union’s complaint also constitute the Town failing to comply with the provisions of RSA 273-A:5 (g) and have resulted in a breach of the parties’ collective bargaining agreement in violation of RSA 273-A:5,I (h).

The Town filed its response with the PELRB on March 20, 2003 in which it denies all allegations contained within the Union's complaint with the exception of its acknowledgement that the Union represents certain employees working for the Town. It raises the defenses of: (1) that the Union has failed to state a claim; (2) that the issues are not ripe for adjudication; (3) the Union's claims are barred by the doctrine of *res judicata*; (4) the Union's claims are barred by the doctrine of *collateral estoppel*; and (5) that the Union's claims are time-barred by the six-month statute of limitations.

The Union requests relief in the form of a cease and desist order against the Town actions and an order that the Town award the Union its reasonable costs, including costs of representation necessary to bring this complaint. For its part, the Town seeks a dismissal of the Union's complaint, requests an interim briefing schedule to adjudicate the defenses it has raised and also seeks an award of reasonable attorneys' fees and costs necessary to its defense of this complaint.

At the outset of the Pre-Hearing, the Hearing Officer informed the parties that this matter involves an individual who is expected to testify as a material witness who was represented by the Hearing Officer. The Hearing Officer, by virtue of that representation in a previous matter was in an adversarial relationship with others who are expected to testify. In his representative capacity, he came into knowledge of certain information about these material witnesses. After being informed of the Hearing Officer's previous relationships to witnesses, the parties stipulated that the Hearing Officer could proceed with the conduct of the Pre-Hearing Conference and issue the Pre-Hearing Order, but would recuse himself from any further decision-making or other input to the board's decisions in this matter.

#### PARTICIPATING REPRESENTATIVES

For the Complainant: Jeffrey Brown, SEA Field Representative/Negotiator

For the Respondent: Robert D. Ciandella, Esquire

#### PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether the Union has failed to state a claim for which relief may be granted.
2. Whether the Union's claims are ripe for decision?
3. Whether the Union's claims are barred by the doctrine of *res judicata* (i.e. the claim or claims have been previously adjudged)?
4. Whether or not the Union's claims are barred by the doctrine of *collateral estoppel* (i.e. certain relevant issues having been previously determined that affect the pending claims)

5. Whether the Union's claims are barred by the Public Employee Labor Relations Act (RSA 273-A) limitations against actions provision?
6. Whether or not alleged actions of the Town and its agents constitute the commission of an unfair labor practice by:
  - a. restraining, coercing or otherwise interfering with its employees in the exercise of those employees' rights provided under RSA 273-A:5, I(a);
  - b. discriminating in the tenure or terms and conditions of employment of its employees for the purpose of discouraging membership in the employee organization certified to be the bargaining unit's exclusive representative in violation of RSA 273-A:5, I (c);
  - c. discriminating against the bargaining unit's president and other union members because of complaints filed and testimony given before the PELRB in previous proceedings in violation of RSA 273-A:5, I (d).
  - d. undertaking unilateral actions regarding wages, benefits and other terms and conditions of work constitutes a refusal to negotiate in good faith in violation of RSA 273-A:5, I (e), and (i); and
  - e. failing to comply with the provisions of RSA 273-A:5 (g) and have resulted in a breach of the parties' collective bargaining agreement in violation of RSA 273-A:5, I (h).

WITNESSES

For the Complainant:

1. Cora Stockbridge, President, Seabrook Employees Association
2. Blanche Gove-Bragg,
3. Oliver Carter, Selectman
4. Robert Stankaitis,
5. George Eaton,
6. Asa Knowles, Selectman

For the Respondent:

1. E. Russell Bailey, former Town Manager
2. Warner Knowles, Water Division Superintendent
3. Karen Knight, Selectman
4. Joseph Titone, acting Town Manager
5. Lynn Willwerth,

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. SEA Grievances, with attachments, numbered and dated, as follows:

12-02-23 (Step IV on 1/28/03)	12-02-24 (Step IV on 12/31/02)
12-02-25 (Step IV on 1/7/03)	02-02-26 (Step IV on 1/7/03)
12-01-03 (Step IV on 1/7/03)	12-04-03 (Step IV on 1/13/03)
2. Correspondence from J. Brown to J. Titone, dated January 13, 2003
3. Correspondence from B. Mitchell to E. R. Bailey, dated July 3, 2002
4. Correspondence from J. Brown to E. R. Bailey, dated August 22, 2002
5. Correspondence from J. Brown to E. R. Bailey, dated September 19, 2002
6. Correspondence from E. R. Bailey to J. Brown, dated October 28, 2002
7. Correspondence from J. Brown to E. R. Bailey, dated November 6, 2002
8. Correspondence from R. Ciandella to J. Brown, dated November 12, 2002
9. Town of Seabrook License for Parade or Meeting, dated December 17, 2002 and signed received by C. Stockbridge on 1/8/03 at 8:55 am
10. Correspondence from K. Knight to C. Stockbridge, dated January 9, 2003
11. Copy of SEIU Press Release dated January 9, 2003
12. Correspondence from J. Starkey to L. Willwerth, dated January 10, 2003
13. Correspondence from C. Stockbridge to J. Starkey, dated January 13, 2003
14. Grievance of L. Willwerth to J. Starkey, dated January 16, 2003
15. Correspondence from J. Starkey to L. Willwerth, dated January 22, 2003
16. DPW form, undated, provided to clerical employees by Town of Seabrook on or about February 22, 2003

17. Copy of Stipulation in Case No. M-0591-32, stamped 11/15/02 by PELRB
18. Correspondence from E. R. Bailey re union activities, dated August 1, 2002
19. Correspondence from J. Brown to E. R. Bailey, re 8/1 correspondence, dated September 19, 2002
20. Correspondence from J. Brown to E. R. Bailey, dated September 18, 2002
21. Correspondence from R. Ciandella to J. Brown, dated September 23, 2002
22. Correspondence from J. Brown to R. Ciandella, dated September 24, 2002
23. Correspondence from J. Brown to R. Ciandella, dated October 16, 2002
24. Correspondence from R. Ciandella to J. Brown, dated October 21, 2002
25. Correspondence from E. R. Bailey to J. Brown, Dated September 27, 2002
26. Correspondence from J. Brown to E. R. Bailey, dated September 30, 2002
27. Correspondence from E. R. Bailey to J. Brown, dated October 2, 2002
28. Correspondence from J. Brown to E. R. Bailey, dated October 9, 2002 -
29. January 27, 2003 memo from J. Titone on office space at Town Hall
30. Stalking complaint filed by K. Knight against C. Stockbridge
31. Caricature of C. Stockbridge hung in Selectmen's Office
32. Photographs of Project Clerk's office after re-construction

For the Respondent:

1. Unknown at the present time (Counsel to identify and notify Union Representative and the PELRB within seven (7) days of the date of this order)

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 the combined 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 seven (7) days from the date of this Order.

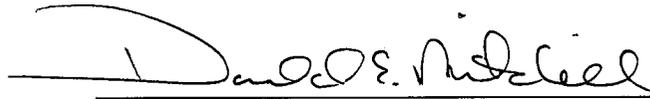
### DECISION AND ORDER

1. The Town's representative shall file any legal memoranda in support of the potentially dispositive defenses listed above as Issues #1-#5 on or before May 5, 2003. At the same time that those memoranda shall be filed with the PELRB, the Town's representative shall provide copies of the same to the Union's representative in like manner as the originals are filed with the PELRB. Thereupon, the Union shall have leave to file any responsive memoranda in regard to the same issues referenced above with the PELRB on or before May 14, 2003 also with copies provided at that time to the Town's representative in like manner as filed with the PELRB. Either party may supplement their respective legal briefs, if filed with the PELRB and put into the possession of the opposing representative no later than 4:00PM, Friday May 16, 2003. It is understood that both sides reserve the right to submit post hearing briefs following the close of evidence in accordance with such leave as may be extended by the board at that time.
2. The parties shall exchange any documents proposed as exhibits on or before April 25, 2003 that are reasonably requested by a party before April 18, 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.
3. 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.
4. The party representatives shall forward any amendments of their Witness and Exhibit lists to the opposing representative or counsel and to the PELRB no later than five (5) days prior to the hearing date indicated below. The parties shall also

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 N. H. Admin. Rule Pub 203.02.

5. The Town has indicated its intention to file proper notice naming Jeffrey Brown as a witness to be called in their case in chief. Such notice, if Mr. Brown is to be called, shall be filed on or before April 25, 2003 to allow the Union to make appropriate arrangements for representation at the evidentiary hearing.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.
7. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled at the Office of the Public Employee Labor Relations Board on Tuesday, May 20, 2003 beginning at 9:30 A.M. Notwithstanding the preliminary procedural and dispositive motions raised by the Town. As is the prevalent practice at the PELRB, as with most administrative agencies regarding such "motion practice", both parties should be prepared to go forward with their cases on the merits of the Union's claims on that date.

Signed this 16<sup>th</sup> day of April, 2003



Donald E. Mitchell, Esq.  
Hearings Officer

Distribution:

Jeffrey Brown, SEA Field Representative/Negotiator

Robert D. Ciandella, Esquire