



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-0575-17

Decision No. 2003-037

APPEARANCES

Representing the Seabrook Employees Association
SEA/SEIU Local 1984

Jeffrey L. Brown, Field Representative

Representing the Town of Seabrook

Robert D. Ciandella, Esquire

BACKGROUND

The State Employees Association of New Hampshire, Local 1984, SEIU, on behalf of the Seabrook Employees Association ("Union") filed unfair labor practice (ULP) charges on October 11, 2002 against the Town of Seabrook ("Town") alleging a violation of RSA 273-A: 5 I (g) resulting from the Town's failure to abide by and comply with Rule PUB 201.02 (e) when the Town failed to display copies of any complaint filed by or against it at locations where its employees work. The Town filed its answer and counterclaim on October 25, 2002. Thereafter, the parties attended a pre-hearing conference on December 4, 2002, as memorialized by Decision No. 2002-144. During that conference, they agreed that they would submit the case for decision upon a set of stipulated facts, agreed exhibits and legal memoranda, without the need for hearing or the examination of witnesses. Both parties filed memoranda of law on January 24, 2003 as agreed and directed. On January 28, 2003, the Union filed an "Addendum to Memorandum of

Law” which was followed by the Town’s response filed on January 31, 2003. The parties’ joint stipulation of facts was filed on February 11, 2003, after which the record was closed.

FINDINGS OF FACT

1. The Town of Seabrook employs personnel in the operation of that municipality and, thus, is a “public employer” within the meaning of RSA 273-A: 1 X.
2. The Seabrook Employees Association, Chapter 12 of the State Employees Association, SEIU Local 1984, is the duly certified bargaining agent for clerks, assistant appraisers, custodians, equipment operators, police dispatchers, and certain secretaries employed in the selectmen’s office and in the water, recreation, highway and police departments.
3. Rule PUB 201.02 (e) provides, in pertinent part:

A public employer shall display copies of any complaint filed by it or against it or delivered to it at locations where such employees work not later than the date on which it files its answer with the board or on which it receives the answer of the charged party, or not later than 15 days after the receipt of the complainant if no answer to the complainant is to be filed.
4. The parties’ joint stipulation of facts dated February 3, 2003 and filed on February 11, 2003, states:
 1. In May, 2002, the Town filed an Unfair Labor Practice charge against the Union, subsequently assigned Case No. M-0591-36 by the PELRB;
 2. In August, 2002, the Town filed an Unfair Labor Practice charge against the Union, subsequently assigned Case No. M-0591-38 by the PELRB;
 3. The Union filed its respective answers to the charges contained in Case No. M-0591-36 and Case No. M-0591-38;
 4. The Town has not posted a copy of the complaints it initiated in Case M-0591-36 or in Case No. M-0591-38;
 5. The Union sent a letter to (then) Town Manager E. Russell Bailey dated September 2, 2002, a copy of which is attached hereto;
 6. The Union filed a complaint of Unfair Labor Practice charges against the Town with regard to its failure to post the aforementioned

complaints, said complaint filed with the PELRB on October 11, 2002;

7. The Town filed an answer and counter-petition and in it sought a declaration as to the applicability of Rule 201.02 (e) to the Town and its requirements as to requisite postings.
8. The Town submitted a memorandum of law dated January 30, 2003, in further support of its position.
9. The Union submitted a memorandum of law dated January 23, 2003, in support of its position; and also submitted an addendum to its memorandum of law dated January 28, 2003, in further support of its position.

DECISION AND ORDER

The pleadings and joint stipulation in this case present a very succinct set of facts. First, RSA 273-A: 5 I (g) makes it an unfair labor practice for any public employer "to fail to comply with this chapter or any rule adopted under this chapter." Second, Rule PUB 201.02 (e), recited in Finding No. 3, above, requires, by using the word "shall," the public employer to "display" copies of any "complaint" filed "by it or against it...." Third and finally, the parties' joint stipulation essentially admits (Finding No. 4, item 4) that the required posting or "display" did not occur. The Town, through its memorandum of law, would have us hold that the foregoing language and circumstances are not such as to require posting of the complaints referenced in the joint stipulation. We disagree.

It is, we believe, clear that the provisions of PUB 201.02 (e) pertain specifically to unfair labor practice complaints as suggested by the Town. We reach this conclusion based on the "display" provision being placed within PUB 201, based on the use of the word "complaint" versus "petition" or some other more generic term, and the reference to an "answer." We do not concur with the Town, however, that the provisions of PUB 201.02 (e) are either discretionary or only applicable when or if the Town is not named in the complaint. If this were not enough, we believe our conclusion is unequivocally supported by the broad mandate that the public employer must display any complaint *filed by it or against it*. (Emphasis added.)

Looking to the three items or causes for exception to the need to "display," the Town first asserts (Memorandum, p. 3) its "good faith belief" that PUB 201.02 (e) only applies in those circumstances "where the public employer was not named in the complaint and when employees might nevertheless be directly affected by the Boards disposition of the complaint." Again, we disagree. From its face, the language of PUB 201.02 (e) grants no exceptions and is broad in its mandate, namely, that the public employer, whether it is the charged party or not, must post or "display" the complaint. The public policy involved here is not based on an additional duty to be imposed on the public employer but rather on a need to be sure that members of the bargaining unit, whether they be union members or not, are informed about complaints or adjudicatory proceedings which have a potential impact on them.

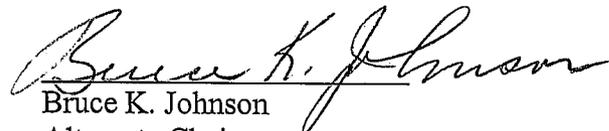
Next, the Town (Memorandum, p. 5) asserts, "In cases where the union and the public employer are named in the complaint, the employees would not require notice through a posting as the Union would be obligated to communicate with its own members regarding such members pursuant [to] its duty to represent." Here, the Town misses the distinction between "employees" and "union members." We believe the intended purpose of PUB 201.02 (e) is to ensure notice to employees, regardless of their status, or lack thereof, as union members.

Third and finally, the Town (Memorandum, p. 6) suggests that, for the failure to display to rise to the level of a ULP, there must be "some minimal degree of proscribed motivation." Further, the Town asserts that it is the Union's burden to show this "proscribed motivation." This is not the case. PUB 201.02 (e) shows no indication, intent or imposition of such a standard, let alone switching the burden to the Union. Next, the complained of conduct, in the form of a failure to display, gives every appearance of being a *per se* violation. And finally, any reading which supports the Town's position on this basis for exception would totally ignore the broader issue of keeping employees in the bargaining unit informed of labor-management actions which have risen to the level of complaints and which have the potential for impacting the terms and conditions of employment of employees in the bargaining unit.

Based on the foregoing, we find that the Town violated RSA 273-A: 5 I (g) by its failure to comply with the requirement to "display" complaints as is more specifically set forth in PUB 201.02 (e). By way of remedy, we direct that (1) this decision be posted in a conspicuous place in each municipal building where members of this bargaining unit are employed for a period of thirty (30) consecutive days and (2) all pending ULP complaints involving the Town in any capacity, such as to trigger the requirements of PUB 201.02 (e), be posted or displayed in accordance therewith and to remain so posted or displayed so long as the proceedings referred to in each respective complaint remain open and are pending either final decision or joint resolution.

So ordered.

Signed this 8th day of April, 2003.


Bruce K. Johnson
Alternate Chairman

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

Distribution: Jeffrey L. Brown, Field Representative
Robert D. Ciandella, Esquire