



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Town of Seabrook	*	
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Petitioner	*	
	*	
v.	*	Case No. M-0591-38
	*	
Seabrook Employees Association	*	Decision No. 2003-070
SEA/SEIU Local 1984	*	
	*	
Respondent	*	

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APPEARANCES

Representing Town of Seabrook:

Robert D. Ciandella, Esquire

Representing Seabrook Employees Association:

Jeffrey L. Brown, Field Representative

Also Appearing:

Lynn Willwerth	(Town)	Curtis Slayton	(Union)
Tom Willwerth	(Town)	Blanche Bragg	(Town)
Warner Knowles	(Town)	Tarnya Cody	(Union)
Ralph Marshall	(Union)	George Eaton	(Union)
Cora Stockbridge	(Union)	Philippe Maltais	(Town)

BACKGROUND

The Town of Seabrook (Town) filed unfair labor practice (ULP) charges on August 5, 2002 against the Seabrook Employees Association, SEA/SEIU Local 1984 (Union) alleging violations of RSA 273-A:5 II (a) (c) (f) and (g) resulting from the union president's coercion

and interference of public employees, attempting to cause the public employer to discriminate against a bargaining unit employee, breach of contract and lack of compliance with RSA 273-A. The Union filed its answer on August 19, 2002 after which the parties participated in a pre-hearing conference on October 2, 2002 as memorialized in Decision No. 2002-120 and amended in Decision No. 2002-138, dated November 20, 2002. On October 2, 2002 the Union filed a request for a "more Definite Statement of Charges." This was followed by the Town's First Amended Improper Practice Charge and its request to take depositions, both filed on October 22, 2002. The Union filed a request to take depositions on October 31, 2002 along with its answer to the amended complaint.

On November, 21, 2002, Robert Ciandella, on behalf of both parties, filed a joint motion to amend the pre-hearing order so that the parties might address and brief an issue of standing. The PELRB heard oral arguments on the issue of standing on December 19, 2002, addressed the issue in Decision No. 2002-154 dated December 27, 2002, and affirmed that the evidentiary hearing remained scheduled for January 16, 2003. Meanwhile, the Union filed a motion to dismiss on December 10, 2002, followed by the Town's motion in limine filed on December 20, 2002 and its motion objecting to the Union's motion to dismiss both filed on December 23, 2002. On December 27, 2002 the parties jointly filed a motion for an *in camera* review of certain exhibits to be completed by January 17, 2003, with depositions to be concluded by January 31, 2003 and with the evidentiary hearing to be reset to February 15, 2003. These arrangements were confirmed in an interim decision (Decision No. 2002-156) dated December 30, 2002.

After the parties reported that they were unable to complete their *in camera* review of exhibits by January 17, 2003, they were asked to and did participate in an additional pre-hearing conference on January 16, 2003. These proceedings determined that paragraphs 8 through 14, inclusive, of the Town's First Amended Improper Practice Charge lacked relevance and must be withdrawn. See Decision No. 2003-007, dated January 17, 2002, which left the February 15, 2003, hearing date unchanged.

On February 24, 2003, the Town filed to take two more depositions. On March 6, 2003, the Union filed to take one more deposition. Meanwhile, on March 4, 2003, the Town filed its Second Amended Improper Practice Charge, alleging events which occurred after the filing of both the original ULP on August 5, 2002 and the First Amended Improper Practice Charge on October 22, 2002. The Union's answer to the Second Amended Improper Practice Charge was filed on April 3, 2003.

On March 13, 2003, the Union representative filed a consented-to request for a continuance of the April 3, 2003 evidentiary hearing date. On that same date, the PELRB set a new hearing date of April 29, 2003, the notice for which carried an annotation that "No further continuances, including consensual, will be granted without a hearing in this matter."

This matter was heard by the PELRB on April 29, 2003, as noted above. At the conclusion of those proceedings, the parties agreed to file post-hearing briefs to be received at the PELRB not later than the close of business on May 30, 2003. Those briefs were received on May 30, 2003, after which the record was closed.

## FINDINGS OF FACT

1. The Town of Seabrook employs personnel who work in its police, fire, water, sewer, recreation and highway departments and, thus, is a "public employer" within meaning of RSA 273-A:1 X.
2. The Seabrook Employees Association, SEA/SEIU Local 1984, is the certified bargaining agent for the following employees employed by the Town, to wit: Clerks-Selectmen's Water Dept., Recreation Dept., and Asst. Appraiser's, Custodians-Town office, Highway Dept., Water Dept., and Recreation Dept., Laborers & Equipment Operations-Highway Dept. and Water Dept., Laborers & Equipment Operations-Highway Dept., and Water Dept., Police Dispatchers, Secretary to Police Chief, Secretary to the Selectmen, Working Foreman, Wastewater/water operator, Janitor, Equipment Operator/CDL/laborer and clerk.

Amended certification M-0575 dated December 21, 2000, with original certification dated May 14, 1986.

3. The Town and the Union are parties to a collective bargaining agreement (CBA) for the period April 1, 1998 through March 31, 2002, and continuing for all pertinent times thereafter under *status quo* provisions. Article V, of the CBA addresses "Non-Discrimination" wherein section 1 provides:

- 5.1. Neither the Town nor the Association shall interfere with the rights of employees covered by this Agreement to become or not become members of the Association, and there shall be no discrimination against any such employees because of lawful Association membership or non-membership activity or status.

Article X of the CBA addresses "Grievance Procedure," defines grievance as "those disputes involving the interpretation, application or alleged violation of this Agreement," and contemplates grievances which are initiated "within ten business days after the employee concerned has become aware..." stating no methodology by which the Town may initiate the grievance process.

Article XIII of the CBA addresses "overtime" wherein Section 13.2 and 3 provide:

- 13.2 Work outside the normal work schedule shall be made equally available to department employees on the basis of an established call list for each work section and a general call list which are at least on an annual basis on January 1<sup>st</sup> presented to the Association for its review and

concurrence with the method and manner of assignment of work.

Overtime shall be offered on a rotating basis according to the call list first to those employees within the work section and according to the agreement reached by the Town and the Seabrook Employees Association. When the need arises for additional employees and the Town has exhausted the work section call list, the Town shall then utilize the general call list which is comprised of all unit employees capable of performing said work.

In the case of dispatchers, beginning January 1 and each January 1 thereafter, the call list will be started and rotation of all employees for the purposes of call back and filling of vacant shifts will take place during the full year.

13.3 Employees who are called back to work after the conclusion of their regular work day shall be reimbursed for a minimum of three (3) hours of service at the rate of one and one-half (1 ½) times the employee's current rate of pay. If the need for services is less than three (3) hours, the employee will be guaranteed three (3) hours pay at time and one-half. If the employee is required to be called back more than once during a single three (3) hour period, the employee shall only be paid for one call back period.

4. The Town brought this complaint because of alleged union-sponsored activities adverse to Lynn Willwerth, a full-time Town employee since 1992 and the sewer clerk, a bargaining unit position, for the past five years. She ceased her union membership in 1998 and now claims, by her testimony, that the Union treats her differently than other employees, discriminates against her and harasses her by trying to deprive her of benefits accorded to other members of the bargaining unit. Her allegations, identified by counsel for the Town in opening remarks as the result of the several updates or amendments to the original ULP, involve four incidents, namely, (1) the July 9, 2002 meeting confrontation, (2) the challenge to her callback pay in July of 2002, (3) a newsletter article, and (4) her attempt to be put on an overtime call list as referenced in CBA Article XIII.
5. On May 24, 2002, Willwerth was called back from vacation (annual leave) to work on a project involving the sewer department and was paid for a three hour call-back under Article 13.3 of the CBA. Town Ex. No. 3, page 26. This prompted a letter dated July 3, 2002 from Union representative Brian Mitchell

to then Town Manager Bailey (Town Ex. No. 2) inquiring about the incident, to wit:

The Union is requesting from the Town, its interpretation of an incident that occurred on May 24, 2002.

On May 24, 2002, there was a clerical employee on vacation for her 8-hour shift. Her supervisor called this employee during her regular work shift to come in to work. This employee was paid or a 3-hour call in.

It is the Union[']s interpretation of the CBA Article 16.1.7. "No employee shall be entitled to work his/her vacation with pay unless special authorization is granted by the Town Manager." The way we read this is if an employee is called in from vacation he/she should get their vacation accrual adjusted for time worked not paid overtime.

The union is requesting in writing from you, the town[']s interpretation of this event so that this can be applied to all employees equally.

Please feel free to contact me if you should have any questions.

Willwerth was offended by this challenge to her being called in from vacation to work on a job-specific project (hook-up data), being paid for it on an overtime basis, and having this challenged by Mitchell's suggestion there should have been an adjustment to her vacation accrual, above, instead of time and a half compensation. Willwerth said overtime pay was the practice for such call-backs, not vacation accrual adjustments, and that she was singled out for scrutiny. Willwerth testified that she had filed a grievance, not in evidence, some time ago, about overtime eligibility because Union president Stockbridge was getting it and she (Willwerth) was not. She also said she had been told it was not grievable. Willwerth is not the only non-union member in the bargaining unit.

6. On July 9, 2002, Willwerth was asked by Supt. Warner Knowles to attend a meeting to take notes about a discussion involving call back procedures, a task which she said was not uncommon for her to perform. She testified that, during that meeting, George Eaton, vice president of the union and an equipment operator said, "I will not sit here with her. She is a non-member." She heard Knowles admonish Eaton by saying "We're not getting into personalities here" and warned him he would be reprimanded if he left the meeting. Eaton left anyway, but returned later before the meeting concluded. Willwerth said this was not the first time Eaton had done something like this to her. She complained that it affected her concentration and also spoke to Knowles about it after the meeting.

7. Willwerth testified that an article appeared in an anonymous publication called "Behind the Scenes in the Town of Seabrook, August 2002, Volume 1, Issue 1" which was aimed at her. The article was entitled "She's At it Again" and started with sentences reading "I'm sure you have heard about special needs students, well folks, we have a special needs clerk. Her needs are very demanding on the Town manager and he finds it very hard to keep up with them..." Neither Willwerth nor the Town was able to establish any connection between this "publication" and the Union.
8. On or about January 3, 2003, Willwerth volunteered to go on the call list for snow plowing in anticipation of a forecasted storm. She testified that she had prior experience in snow plowing for Public Works and, if using a small truck, did not need a commercial drivers license. Following the anticipated storm Willwerth expressed concern to DPW Manager John Starkey about why she was not called in. Starkey wrote her a letter (memo) of explanation on January 10, 2003 (Town Ex. No. 5) which reiterated his utilization of personnel from both the departmental and general call lists and a meeting he had with Union president Stockbridge, to wit:

You should also know that I have this week met with Mrs. Cora Stockbridge President of your bargaining unit Seabrook Employees Association Chapter 12 Local 1984 and she has vehemently told this writer that your union does not want or will not allow Clerks and Secretaries to be included on the general call list.

In as much as I have told Cora that I would welcome your inclusion on the aforementioned call list I think it is best if you would redirect this point back to your Bargaining Unit/Union. I believe that their sticking this point is that your job description does not include the work you are requesting. You should know that I have offered to maintain a new list which would be members of their Bargaining Unit/Union who are qualified to do the winter work but who's job description does not specifically include this type of work.

Finally I am surprised that your bargaining unit/union would not want Secretaries/Clerks of their membership on the call back list. As this union is having some difficulty supplying the Town with 4 CDL driver during storms of this size.

Willwerth responded to Starkey by memo of January 16, 2003, taking issue with his decisions, reasserting her qualifications and seeking compensation for 19 hours worked by a part time employee as well as placement on the call list. Town Ex. No. 6.

9. Philippe Maltais is the chief operator at the wastewater treatment plant where he manages both the staff and operations. He attended the July 9, 2002 meeting mentioned in Finding No. 6. He testified that he called the meeting and that Willwerth was asked to attend as a staff member because she customarily took notes. Maltais said George Eaton was called as a member of his working staff, not in his capacity as a union officer. The meeting was called to correct worker misunderstandings about overtime procedures. While Maltais and operators were in his office waiting for Warner Knowles, he heard Eaton say he was not staying because Willwerth was not a dues paying member. Knowles apparently had arrived by this time because Maltais described Knowles's response which instructed Eaton that the meeting was not for union purposes, but was about overtime and who qualifies for it. Maltais described Eaton as "agitated." Eaton did leave, to return later during the meeting and announce he was only going to participate as an "observer." Eaton's on-going comments about Willwerth and overtime caused Knowles to tell him to leave Willwerth out of the discussion and stop bickering about overtime. Before the end of the meeting, Willwerth departed from her role as note taker and started arguing with Eaton and others who supported his position. After the meeting ended, Willwerth came to his (Maltais's) office, more upset than she had been during the meeting. She told him she was "tired of being the target of these attacks" and she wanted something done soon. The Town Manager was called in to discuss issues of inappropriate behavior with her.
10. Cora Stockbridge has been a twenty year employee of the Town. She has been a union activist, serving as chief steward from 1985 to 1991 and as president from 1998 to the present. The current grievance frequency has been as high as she has ever seen it the past twelve to eighteen months. Grievances are filed both individually and by the chapter (local). Currently forty to forty five, or more, grievances are pending. After grievances are filed, they are reviewed locally by the directors of the Association and undergo further review by the state organization, State Employees Association of New Hampshire, in conjunction with their designated filed representative. The backlogged grievances have been processed through the initial stage, namely steps I, II and II, of the grievance procedures routinely, but when they are ready for review by the selectmen, at step IV, they are ignored and not heard, thus causing the forty-plus case backlog. Stockbridge described her bargaining unit as having approximately 54 members, 35 or 36 of whom are union members. She said non-members are permitted to file grievances and may represent themselves or seek assistance. Stockbridge said Willwerth receives benefits and consideration not available to other members of the bargaining unit. This causes complaints and she, in the name of the local, files grievances.
11. Stockbridge was aware of Brian Mitchell's inquiry on behalf of the union, Finding No. 5, Town Ex. No. 2. She knew Willwerth had taken an annual day, had been called back on May 24, 2002, and was paid overtime for the call

back, something she discovered while she was researching another grievance matter. She supported Mitchell's letter of inquiry to Bailey (Town Ex. No. 2) because it was her understanding that an employee must be called back to work outside his or her regular work schedule in order to qualify for overtime pay versus a reduction in leave time taken. Stockbridge said she had made an informal inquiry of Bailey about this but he never "got back to me." Likewise, she did not seek clarification from Willwerth as the inquiry was a general one pertaining to contract administration across the bargaining unit, not just to Willwerth. She confirmed that, at the time, it was the Union's position that Willwerth's vacation time taken should have been reduced rather than her having been paid on an overtime basis.

12. Stockbridge said she knew about the July 9, 2002 meeting because she discussed it with Warner Knowles. Knowles told her George Eaton asked for the meeting because he wanted to discuss a Ralph Marshall grievance matter. Thus, it would have been more appropriate for a non-unit, confidential employee named Wetherington to have been asked to be note taker rather than Willwerth, a non-member. On cross-examination, Stockbridge testified she understood the July 9, 2002 meeting to be a grievance hearing where Eaton was pursuing Marshall's grievance about being skipped over on the call list and, thus, being denied overtime. Marshall had also been working with Stockbridge about having his grievance heard. This is why he obtained a copy of the newsletter (Finding No. 7, Town Ex. No. 4) from her. Stockbridge testified she obtained the newsletter in the mail but did not contribute to or distribute it. She knew that it contained comments critical of the selectmen's failure to process grievances at their level.
13. Stockbridge testified that Warner Knowles asked her about the Union's position relating to putting secretaries and clerks on the call list, identified in Finding No. 3, CBA Article 13.2. Stockbridge said the Union would frown on this and felt this matter had been settled by the grievance and subsequent sidebar agreement signed by the parties (she was a signatory along with Russell Bailey) on November 29, 2000. Union Ex. No. 1. That agreement delineated both departmental and town-wide call lists, neither of which contained clerks generally nor Willwerth's name in particular. It provided, *inter alia*, that, "for sewer department call out needs, the wastewater treatment plant employees will be called out first, followed by water/sewer personnel and if there is a need for additional personnel, the town wide list will be used. Employees will be called out with respect to their qualifications." Stockbridge said that there is no provision for the call back of someone who is not on the call back list, therefore, she was concerned by Willwerth's 2003 attempt (Town Ex. No. 6) to be placed on the call back list without involving the Union, a signatory to the November, 2000 grievance resolution in Union Ex. No. 1. Chronologically, Stockbridge said DPW Manager John Starkey had sought her out about Willwerth's request for overtime plowing pay and inclusion on the general call list as recited in Town Ex. No. 5 which is quoted in Finding



No. 8, above. After conferring with Stockbridge, Starkey denied Willwerth's claim/request/grievance by his memo of January 10, 2003. Town Ex. No. 5. This prompted a new appeal by Willwerth to Starkey on January 16, 2003. (Town Ex. No. 6). Stockbridge testified that Starkey denied this claim, too, only to be reversed by the then acting town manager, Joe Titone. This reversal prompted two unit member grievances and an association grievance.

14. George Eaton has worked for the Town 7 ½ years, is a wastewater treatment plant operator and has been active in the local union as Vice President, steward and counselor. He testified that the July 9, 2002 meeting was called for the purpose of discussing a pending, not-yet-reduced-to-writing grievance where Ralph Marshall had been skipped over on the call-back list. Eaton said the Marshall grievance had been filed with Knowles and that July 9, 2002 was the hearing before Knowles relating to it. By way of substantiating his belief this set of circumstances, Eaton said Mike Colin was asked to leave the meeting because he was on the water department rotation list. If it had been a staff meeting, according to Eaton, Colin would have been expected to stay for the meeting. Eaton recalled that he entered the meeting by announcing he was there as union steward whereupon he asked Knowles to ask Willwerth to leave. After Eaton left the meeting, contrary to the instruction given by Knowles, Eaton contacted Stockbridge, who called Bailey, who called Eaton and told him to return to the meeting. Eaton said, "There wouldn't have been a meeting if I didn't request it." Although Knowles asked Willwerth to attend the meeting to take notes, Eaton did not see her taking any. He described her as being active in the call back discussion and as doing fifty percent of the talking. On cross-examination he said she "took the meeting over, right out of my hands." Eaton complained to Knowles saying, "I am here as a union steward, Warner." Likewise, Eaton confirmed that Knowles did discipline him for leaving the meeting contrary to a direct order. Eaton explained that he did represent Marshall "when I returned" but that Knowles denied the grievance at this informal, pre-written-grievance step. Eaton said that the meeting, as it progressed, turned into a discussion about Willwerth working a call back on an overtime basis during what would normally be her working hours.
15. Ralph Marshall is a water/wastewater operator who Eaton asked to come to the July 9, 2002 meeting "to straighten out the call list." Marshall said he had a pending grievance and remembers Eaton asking Colin to leave (he did) because the grievance did not involve him. Marshall testified he received his copy of the newsletter (Town Ex. No. 4) from Stockbridge and acknowledged that he passed copies of it out at a selectmen's meeting. The day after Marshall distributed copies of the newsletter, chair of the selectmen, Karen Knight, called him about his grievance, which is the subject of actions pending in Case No. M-0575-14. Marshall said his use or distribution of the newsletter was not intended to embarrass Willwerth, but to focus on the selectmen's failure to hear his grievance. He did not recall the admonition

from Knowles that July 9<sup>th</sup> was “not a union meeting,” but he did remember Knowles telling Eaton not to leave.

16. Curtis Slayton is a water and sewer foreman and a seven year employee of the Town. He attended the July 9, 2002 meeting relating to Marshall’s call-back grievance, heard Eaton ask Colin to leave because this was a grievance issue which did not involve him, and heard Eaton say “I’m here as steward.” Slayton recalled that the July 9, 2002 meeting started as a grievance hearing and progressed into a discussion about call-back procedures. Likewise Slayton recalled the May 24, 2002 call-back when Willwerth worked in an overtime capacity due to concerns about hookups at the Fields Project. He said he saw her meeting with “the Fields Project people” at the office, sometime between 1:30 and 2:30 which would have been during her normally scheduled work hours. On May 1, 2003 the Town subsequently filed a motion to reopen the record in these proceedings for the limited purpose of impeaching Slayton’s testimony, asserting that Town records show that Slayton was not working on May 24, 2002 because he was on annual leave. On May 15, 2003, the Union filed an objection to the Town’s motion to reopen saying Slayton could have been at the Office “for one of any number of legitimate reasons” on his day off.
  
17. Tarnya Cody, a 14 ½ year employee of the Town, is secretary to the chief of police and a member of the bargaining unit. She has served eight years on the union bargaining team and handles the payroll for the police department. She testified that it is the policy that overtime is paid over 40 hours or outside normal work hours, but call back from vacation, during normal work hours, is not compensated at time and a half. It is only credited towards leave time not actually taken. Cody is also the senior secretary in the bargaining unit. She feels putting clerks and secretaries on the call back list opens a “can of worms” and needs to be negotiated if that change is to be made. Likewise, as senior secretary, if secretaries are to be called back to work, she believes she should be called first, as asserted in a grievance on this topic which Stockbridge filed for her.

#### DECISION AND ORDER

After the hearing in this matter concluded on April 29, 2003, the Town filed a Motion on May 1, 2003 to reopen the proceedings for the limited purpose of impeaching the testimony of Curtis Slayton. See Finding No. 16. From the exhibits attached to the motion to reopen the record, we conclude that it is more probable that not that Mr. Slayton was not on the payroll, i.e., in pay status on May 24, 2002. Beyond that, we draw no further inferences. The motion to reopen the record is denied because Mr. Slayton’s testimony was not pivotal, has not been relied upon by us and has not been determinative in these proceedings. We decline the opportunity to reopen the record over testimony which shows no promise of making a difference in our disposition of the case before us.

The conduct complained of in these proceedings concerns four events, namely, (1) the July 9<sup>th</sup> meeting confrontation between Willwerth and Eaton, (2) the Union's inquiry into Willwerth's receiving call back pay for working on May 24, 2002, (3) the newsletter article which Willwerth found offensive, and (4) Willwerth's attempts to get her name placed on the call back lists. For purposes of our analysis, we will look at each of these situations as an independent event and then as to their cumulative effect, if any, vis-à-vis the charges alleged by the Town.

Looking first to the July 9, 2002 meeting where there was a confrontation between Willwerth and Eaton, we find the testimony to be inconsistent. Finding Nos. 6, 9, 12, 14 and 15. It is likely that Eaton did protest Willwerth's presence in one form or another and that he did believe, at one time or another, that his role then was as a union official. With that in mind, we look to the consequences of Eaton's conduct on Willwerth, other than what may have been self-serving, and what she may have complained about, after the fact, to either Knowles or Maltais. Finding Nos. 6 and 9. It was Eaton, not Willwerth who felt the need to leave the meeting. There is no evidence that Eaton's conduct impaired or prevented Willwerth's ability to take notes. For that matter, this Board was not provided with a rendition of those notes or evidence that Willwerth ever took any notes at the meeting. Conversely, both Maltais and Eaton testified that Willwerth became actively involved in the meeting as a discussant, became argumentative with Eaton, and, per Eaton, took the meeting right out of his hands.

From the range of the testimony we heard about this meeting, it appears that it involved a number of non-specific agendas. They included the Marshall grievance, overtime eligibility, overtime opportunities and selection, and a specific discussion about Willwerth working overtime opportunities within the parameters of the CBA. When Willwerth deviated from her role as note taker and became a discussant and participant in the meeting, she exposed herself to contrary opinions and arguments relating to any positions she either advanced or challenged. That exposure cannot and should not be equated to a union attack on her personally. Once Willwerth became active as an advocate of a certain position or positions in the meeting, it is unreasonable for us, or her, to expect that she had immunity from equally active advocacy from meeting participants who did not agree with her. This has not been shown to be and does not rise to the level of an unfair labor practice.

Willwerth was offended by the Union's inquiry as to the basis for her receiving call back pay for May 24, 2002. When we examine the text of the Union's letter of inquiry (Finding No. 5), we find her name was not mentioned in that letter, although others familiar with the date and circumstances may have been able to figure out her identity. Union representative Mitchell's letter (Town Exhibit No. 2) gives the impression of a routine inquiry from a bargaining agent about a matter of contract administration. It appears from testimony from Stockbridge (Finding No. 11) that she tried to resolve this question by making an informal inquiry of the then town manager but he never got back to her. A letter, then, is a logical progression in attempting to get an answer while not waiving the issue for failure to pursue it.

Willwerth's own testimony (Finding No. 5) absolves the Union on the call back pay issue. She stated that overtime pay was the practice for call backs such as she worked on May 24, 2002, not vacation accrual adjustments. This was the type of compensation she received

under Article 13.3 of the CBA and the type of compensation other employees received for similar situations, e.g. Littlefield, Marshall, Eaton and such as were shown in Town Ex. No. 3. We conclude Willwerth was compensated for work on May 24, 2002, on an overtime basis, in a manner consistent with how other employees, similarly situated, were compensated. Willwerth's complaints are self-serving; she simply was not disadvantaged or treated differently as the result of this call back. The Union acted within its mandate to administer the contract. Again, this incident has not been shown to be and does not rise to the level of an unfair labor practice.

Town Exhibit No. 4 is the "Behind the Scenes in the Town of Seabrook" newsletter, absent any identification as to publishers, writers, contributors or editors, which Willwerth found offensive. Finding Nos. 4, 7 and 15. This document contained a front page article, quoted in part in Finding No. 7, entitled "She's At It Again" which contained no reference to Willwerth by name. There was reference to a "special needs clerk" and to a "Knight in shining armor" which, presumably referred to the chair of the board of selectmen. In Volume 2, Issue 2, denominated "October, 2002," of the same newsletter, also part of Town Ex. No. 4., there are messages written in the first person and an annotation about how the *Hampton Union* newspaper suggested that questions raised in the prior issue should be answered. That message was signed "ME" with an acknowledgement of the intended anonymity of the "publication."

While the circumstances surrounding the "Behind the Scenes" newsletter convey a certain intrigue, based on the record before us, we cannot, and have no cause to, attribute creation or publication of this document to the Union. It was the task of the Town, as complainant, to make this connection in order to prevail on this portion of the ULP. It has not. The newsletter incident has not been shown to be and does not rise to the level of an unfair labor practice.

The final, succinct element of the ULP involved Willwerth's attempts to have her name placed on the call back list. Finding Nos. 4, 8, 13 and 14. The circumstances of this attempt are recounted in Finding Nos. 8 and 13 in particular, in Town Exhibit No. 5 and in Union Exhibit No. 1. We make two critical observations upon reviewing the testimony and the foregoing exhibits. First, Willwerth dealt directly with the public works department in volunteering to help with plowing for a storm projected for Friday, January 3, 2003, an event being considered here only is the result of amended proceedings. Apparently, after she was not selected for overtime for this storm, Willwerth complained to Starkey who responded to her by memo dated January 10, 2003, copied to Stockbridge. Town Ex. No. 5. By January 16, 2003, Willwerth wrote Starkey a letter "Re: Grievance - January 3<sup>rd</sup> and 4<sup>th</sup> Overtime" complaining about her non-selection for overtime, seeking compensation for 19 hours worked by a part time employee and requesting "once again that my name be added to the call list." Town Exhibit No. 6. Starkey again denied Willwerth's request which, according to Finding No. 13 in the form of testimony from Stockbridge, was reversed by the then acting town manager, Titone.

Our second observation is that the foregoing sequence of events had the appearance of being the routine submission and processing of a grievance by Willwerth but for Union Exhibit No. 1. That exhibit, the functional equivalent of a side bar letter to the CBA, signed by both Stockbridge and Russell Bailey, was dated 11/29/00 and was a resolution of multiple grievances relating to call back issues, established two call back lists, set the order of call outs and directed

compensation for certain employees who were the subjects of grievances filed in June 1999 and June 2000. All this occurred within the original term of the CBA in effect during the course of these proceedings, namely from April 1, 1998 through March 31, 2002, and continuing thereafter as noted in Finding No. 3.

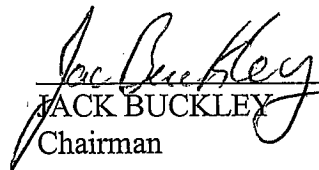
This leaves us with the impression that Willwerth attempted to achieve something, i.e., having her name placed on the call back list, by personal contact which had already been the subject of negotiations and jointly agreed to by the Union and the Town in the form of Union Exhibit No. 1. This is tantamount to being an inappropriate intrusion by an individual bargaining unit member into the basis and content of a labor-management settlement agreement. Willwerth cannot be heard to complain about any mistreatment by the Union for not having been included on the call back list, most recently defined by Union Exhibit No. 1, after having attempted to alter that agreement through actions involving only herself and members of management. There is no evidence that the Union's conduct here was either contrary to the terms of Union Exhibit No. 1 or that it constituted a ULP.

Having considered each of the four component parts of the ULP complaint separately and having found none of them to have risen to the level of being a violation of RSA 273-A:5 II, we, likewise, do not find the totality of the Union's conduct, as alleged, to be, or to have risen to the level of being, an unfair labor practice. We take this opportunity, after reviewing the facts of this case as well as Decisions Nos. 2002-105 and 2003-055, to encourage the parties to take the occasion of a new town manager and the apparent thawing of a multi-year confrontational relationship with each other to examine, reflect on and recommit themselves to the "harmonious and cooperative" labor relations environment envisioned by Chapter 490:1 of the Laws of 1975.

We DISMISS all charges of unfair labor practices and deny all requests for relief sought by the Town.

So ordered.

Signed this 19th day of June, 2003.

  
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JACK BUCKLEY  
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.