

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Londonderry School District	*	
	*	
Complainant	*	
	*	Case No. A-0545-7
v.	*	
	*	Decision No. 2003-099
	*	
AFSCME Local 1801	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Londonderry School District (hereinafter "the District") filed an unfair labor practice complaint on August 6, 2003 alleging that AFSCME Local 1801 (hereinafter "the Union") committed an unfair labor practice in pursuing a grievance, relating to the collection of agency fees, to arbitration. The District contends that through the instant grievance the Union seeks to have the District collect agency fees from employees who are unwilling to provide the necessary written authorization for such deductions to be made. The District cites RSA 275:48 as prohibiting it from collecting such fees without written authorization, and thus it cannot be required to arbitrate a matter where the requested remedy amounts to a violation of the law. The District states that the Union's actions violate RSA 273-A:5, II (f). In its complaint, the District requested immediate relief in the form of an interim cease and desist order against the Union preventing it from proceeding to arbitration. The District also requests, among other things, that the PELRB find that the Union has committed an unfair labor practice and that the PELRB award the District attorney's fees and costs incurred as a result of the filing of the instant charge.

The Union filed its answer to the District's unfair labor practice complaint on August 21, 2003. The Union denies the District's charge and requests that the PELRB dismiss the complaint as unmerited. The Union asserts that the grievance as presented is an appropriate matter for review by an arbitrator, based upon the fact that the parties contract provides for the collection of an agency fee for employees who are not members of the Union.

PARTICIPATING REPRESENTATIVES

For the Complainant: Matthew H. Upton, Esquire

For the Respondent: Katherine McClure, Esquire

ISSUE FOR DETERMINATION BY THE BOARD

Do the action(s) undertaken by the Union, in filing for arbitration in order to compel the District to collect agency fee payments from non-union members of the bargaining unit, constitute a failure to negotiate in good faith in violation of RSA 273-A:5 II (f)?

WITNESSES

For the Complainant,

1. Elizabeth Perkins
2. Suzie Swenson
3. Nathan Greenberg

For the Respondent,

1. Bryan Lamirande
2. Sharman Cohan
3. Harriett Spencer

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 with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that the witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

After discussion between the parties' representatives and with the hearing officer, the parties agreed to meet or otherwise confer relative to reaching a stipulated list of exhibits in the event this matter ultimately proceeds to a Board hearing.

In any event, both parties reserve the right to amend their original list of exhibits as contained in their respective pre-hearing worksheets and to object to any portion of the opposing party's list, in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02.

LENGTH OF HEARING

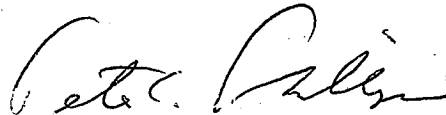
The time being set aside for this hearing is one (1) day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. After discussion between the parties' representatives and with the hearing officer, the parties have agreed to file a joint motion requesting that this matter be held in abeyance until February 1, 2004. The parties are directed to file said motion as soon as possible with the Board, but in any event no later than ten (10) days from the date of this Order.
2. If said motion is granted, the parties' representatives shall execute and file with the PELRB a Joint Stipulation of Facts and Exhibits, and legal memoranda, if any, on or before January 16, 2004. The parties' representatives shall also inform the PELRB, in writing, on or before January 16, 2004, whether or not they waive oral argument in light of the submission of legal memoranda.
3. The party representatives shall otherwise forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB at least five (5) days prior to the scheduled 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.
4. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than twenty (20) calendar days prior to the scheduled hearing date. Any objection or response to the same shall be filed no later than five (5) days thereafter.
5. If the motion referenced in paragraph 1, above, is granted, and unless ordered otherwise as a result of the filing of any subsequent motion or other good cause shown, an evidentiary hearing between the parties is scheduled to be held at the offices of the Public Employee Labor Relations Board on February 19, 2004 beginning at 9:30 AM.

So ordered

Signed this 19th day of September, 2003



Peter C. Phillips, Esq.
Hearings Officer

Distribution:
Matthew H. Upton, Esquire
Katherine McClure, Esq.