



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Professional Firefighters of Hanover,
Local 3288

Complainant

v.

Town of Hanover

Respondent

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Case No: F-0137-7

Decision No. 2003-131

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Professional Firefighters of Hanover, Local 3288 (hereinafter "the Union") filed an unfair labor practice complaint on October 23, 2003 alleging that the Town of Hanover (hereinafter "the Town") committed an unfair labor practice by failing to comply with an arbitrator's award. More specifically, the Union alleges that an arbitrator's award was issued to the parties on October 1, 2003 ordering the reinstatement of Firefighter/EMT-I Larry Ackerman (hereinafter "the grievant") with full back pay and benefits. The Union further claims that by letter dated October 21, 2003, the Town informed the Union that it would not be reinstating the grievant. The Union contends that such conduct by the Town is contrary to the "final and binding" arbitration provision contained in the parties' collective bargaining agreement (CBA) and violates RSA 273-A:3 and RSA 273-A:5 I (a),(b),(c),(d),(e),(f),(g), and (h). The Union's request for relief includes, among other things, that the PELRB order the Town (1) to cease and desist from disobeying the arbitrator's award and (2) to reimburse the Union for its costs and attorney's fees incurred in this matter.

The Town filed its answer denying the Union's charge on November 7, 2003. It contends that the arbitrator's award is unlawful and that to implement the award would violate public policy by endangering the public's safety. The Town states that arbitration decisions are not "final and binding" if they contravene public policy, citing as authority the case of *Appeal of Amalgamated Transit Union*, 144 N.H. 325 (1999). The Town also asserts that the instant matter remains within the jurisdiction of the arbitrator based upon specific language contained within the award. The award states, in relevant part, that "in the event the parties cannot reach a resolution, [the arbitrator] shall retain jurisdiction in resolving this question for the parties." Accordingly, the Town requests that the PELRB (1) decline jurisdiction at this time and remand

the matter to the arbitrator for further review, (2) declare that the Town has not committed an unfair labor practice, and (3) award the Town its' attorney's fees and costs.

PARTICIPATING REPRESENTATIVES

For the Union: John S. Krupski, Esq.

For the Town: Marie M. McPartlin, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether or not the Union's claim is ripe for decision.
- (2) Is the arbitrator's award violative of public policy and/or unenforceable as a matter of law?
- (3) Whether or not the Town has committed an unfair labor practice within the meaning of RSA 273-A:5 I (a), (b), (c), (d), (e), (f), (g), and/or (h) by its non-compliance with the arbitrator's award issued on October 1, 2003.

WITNESSES

For the Union:

1. None at this time.

For the Town:

1. Julia Griffin, Town Manager
2. Barry Cox, Assistant Town Mgr., Personnel Director
3. Roger Bradley, Fire Chief, Hanover Fire Department
4. Michael Hinsley, Captain, Hanover Fire Department

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 witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Parties' collective bargaining agreement, 7/1/00 – 6/30/02
2. Arbitrator's award

For the Union:

1. None other than those marked as "Joint."

For the Town:

1. None other than those marked as "Joint."

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 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. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

If scheduled, the time to be set aside for this hearing will be one-half day. If either party believes that 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.

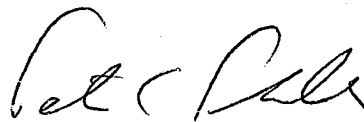
DECISION

1. An issue of consolidation was discussed between the parties' representatives and the hearings officer in light of the recent filing of the Town's counter-charge of improper practice against the Union (PELRB Case No. F-0137-8). The hearings officer also discussed with the parties' representatives the possibility of the instant cases being jointly submitted on stipulated facts and legal memoranda, thereby avoiding the need for an evidentiary hearing before the Board. Counsel for the parties indicated that they would confer within fourteen (14) days of the date of the pre-hearing conference for purposes of reaching agreement on consolidation of PELRB Case Nos. F-0137-7 and F-0137-8 and determining whether or not an evidentiary hearing will be necessary.
2. In the event the parties are able to reach agreement on consolidation and the manner of procedure, they shall notify the PELRB of such agreement by joint motion filed no later than **November 24, 2003**, indicating therein a proposed schedule for the drafting and execution of a "Joint Stipulation of Facts" and the filing of legal memoranda. If the parties agree to proceed in this manner, the record shall be deemed closed upon the Board's receipt of the parties' written submissions and a decision shall issue based solely on the file documents, stipulated facts and the parties' memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination of the merits.

3. In the event the parties are unable to reach agreement, they shall still notify the PELRB no later than **November 24, 2003** as to any and all stipulations they have made and whether or not a hearing before the Board is requested.
4. In the event that the parties cannot agree as to all relevant facts, the parties' representatives shall memorialize those facts upon which they can so stipulate and file said document with the PELRB at least five (5) days prior to the date of hearing.
5. If there is to be an evidentiary hearing, the party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. 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.
6. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
7. Unless otherwise ordered as a result of the filing of any subsequent motion other good cause shown, an evidentiary hearing between the parties will be scheduled in due course at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire. The parties shall be notified through separate correspondence of the date of final hearing.

So ordered.

Signed this 13th day of November, 2003.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

John S. Krupski, Esq.

Marie M. McPartlin, Esq.