



**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

AFSCME Local 3657,  
Hudson Police Employees

Complainant

v.

Town of Hudson

Respondent

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Case No: A-0475-27

Decision No. 2003-137

**PRE-HEARING MEMORANDUM AND ORDER**

**BACKGROUND**

AFSCME Council 93, Local 3657 (Hudson Police Employees) (hereinafter “the Union”) filed an unfair labor practice complaint on September 23, 2003 alleging that the Town of Hudson (hereinafter “the Town”) committed unfair labor practices in violation of RSA 273-A:5 I (b), (c), (e), (g), (h) and (i) as the result of various actions and conduct by officials of the Town’s police department. The Union’s claims include the following: that Union Steward Tad Dionne suffered retaliation as a result of his filing a “class action” grievance relating to earned time, citing in particular the contents of an e-mail he received from Chief of Police Richard Gendron and a reference to the grievance being placed in his performance evaluation; that the Town’s denial of the earned time, which directly led to the filing of the grievance, constitutes an unilateral change in working conditions; and that a memorandum distributed to “All AFSCME Members” by Captain Raymond Mello constitutes an unlawful by-pass of the Union as the exclusive representative of the bargaining unit and an interference with its administration. As remedies, the Union requests, among other things, that the PELRB find that the Town has committed improper labor practices, that it order a public posting of such findings in the workplace for a period of thirty (30) days, and that it order the Town to make the Union whole for any and all costs incurred in pursuing the instant matter.

The Town filed its answer denying the Union’s charge on October 8, 2003. While the Town generally admits to the various chronological events and documents as referenced in the Union’s complaint, it denies that it has in any way engaged in anti-union activity or otherwise violated the law. With respect to the “class action” grievance, the Town indicates that Chief Gendron scheduled a meeting with the other Union stewards in order to fulfill the Town’s obligation under the parties’ contract to meet promptly with the grievant(s). The Town states

that during the course of its processing and investigation of the earned time grievance, it discovered that most union stewards and members of the bargaining unit were unaware that this "class action" had been filed. The Town respectfully submits that its incidental discovery of apparent internal miscommunications between Union stewards and Union members does not constitute anti-union activity. While the Town admits that Chief Gendron sent an e-mail to Steward Dionne, it states that said correspondence was only intended to convey the Chief's disappointment to Steward Dionne that he had declined to avail himself of the informal steps of the grievance procedure and the Chief's "open door" policy. The Town also denies that the information contained in Steward Dionne's performance evaluation constitutes unlawful anti-union activity or retaliation. Accordingly, the Town requests that the PELRB deny the relief sought in the Union's unfair labor practice charge and that it award the Town its costs and attorney's fees incurred in this matter.

A pre-hearing conference was conducted at the PELRB on November 12, 2003 during which both parties were represented by counsel.

#### PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esq.

For the Town: Mark E. Broth, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the Town has committed unfair labor practices within the meaning of RSA 273-A:5 I (b), (c), (e), (g), (h) and/or (i) by retaliating against a union official for filing of a grievance, by-passing the exclusive bargaining agent, dominating and interfering with the administration of the Union, and/or unilaterally changing a condition of employment.

#### WITNESSES

For the Union:

1. Officer Tad Dionne
2. Officer Heather Poole
3. Officer James Connor
4. Officer John McGregor

For the Town:

1. Richard Gendron, Chief of Police
2. Capt. Raymond Mello
3. Capt. William Pease
4. Sgt. Diane Briggs
5. Officer Tad Dionne
6. Officer Heather Poole

7. Officer James Connor
8. Officer John McGregor

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, 7/1/02 – 6/30/05
2. Class Action grievance dated May 3, 2003
3. Captain Mello's memorandum to All AFSCME Members, dated May 6, 2003
4. E-mail from Chief Gendron to Officer Dionne, dated May 8, 2003
5. July '02 – June '03 Performance Evaluation of Officer Tad Dionne

For the Union:

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

For the Town:

1. Prior performance evaluation of Officer Tad Dionne

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

The time set aside for this hearing will be one (1) 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. The parties' representatives shall meet, or otherwise confer, on or before **December 30, 2003** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.

2. 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.

3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

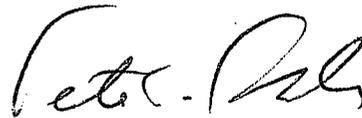
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on

**January 13, 2003 at 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 18<sup>th</sup> day of November, 2003.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:  
Katherine M. McClure, Esq.  
Mark E. Broth, Esq.