

**State of New Hampshire**

**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

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Londonderry Professional Firefighters Association,  
Local 3160

Complainant

v.

Town of Londonderry

Respondent  
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Case No: F-0133-6

Decision No. 2003-143

**PRE-HEARING MEMORANDUM AND ORDER**

BACKGROUND

The Londonderry Professional Firefighters Association, Local 3160 (hereinafter "the Union") filed an unfair labor practice complaint on October 31, 2003 alleging that the Town of Londonderry (hereinafter "the Town") committed unfair labor practices by (1) unilaterally altering the wages, hours and working conditions of bargaining unit members and engaging in direct dealing with said employees over such changes, and (2) creating a "non-bargaining unit" lieutenant's position. More specifically, in Count I of its complaint, the Union alleges that the Town sought its agreement on the reassignment of a unit employee to a non-union position, namely to the position of executive secretary, and that after this request was rejected by the Union, the Town unilaterally ordered the bargaining unit member to perform the non-union duties. The Union also contends that the Town has engaged in direct dealing with the bargaining unit member and, in doing so, contravened its duty to bargain in good faith with the certified representative of the bargaining unit. The Union cites RSA 273-A:3 and RSA 273-A:5 I (e), (g), (h) and (i) as being violated by the Town.

As to Count II, the Union alleges that the certified bargaining unit includes the rank of lieutenant and that on or about October 6, 2003, the Town posted a job opening for a "temporary" position of "Fire Lieutenant." The Union claims that the Town has unilaterally created this "temporary" position in violation of the law, as well as the parties' collective bargaining agreement. Moreover, the Union contends that the Town has sought to establish an "acting out of rank" provision, again through direct dealing with members of the bargaining unit. The Union argues that such conduct by the Town violates RSA 273-A:5 I (a), (b), (c), (e), (g), and (i). The Union's request for relief in these matters includes, among other things, that the

PELRB order the Town (1) to cease and desist from any such further activity, and (2) to negotiate in good faith.

The Town filed its answer denying the Union's charges on November 13, 2003. In response to Count I, the Town admits that it gave a temporary assignment to a bargaining unit member to perform duties as executive secretary, a non-bargaining unit position. It further admits that it made interim adjustments to the employee's duties, responsibilities, wages and hours of work commensurate with the assignment of the non-bargaining unit duties. The Town specifically denies that it violated the law in doing so. Regarding Count II, while the Town admits that it posted a job opening for a "temporary" position of "Fire Lieutenant," it denies all remaining allegations raised by the Union in this portion of the complaint. On November 24, 2003, the Town filed a "Motion to Dismiss; or in the Alternative, to Remand to Arbitration" with the PELRB asserting, inter alia, that the Town's actions were consistent with its exercise of legitimate managerial responsibilities and in conformity with terms of the parties' collective bargaining agreement.

A pre-hearing conference was conducted at the PELRB on November 24, 2003 during which both parties were represented by counsel.

#### PARTICIPATING REPRESENTATIVES

For the Union: John S. Krupski, Esq.

For the Town: Mark T. Broth, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

(1) Whether or not the instant matter should be dismissed, or, in the alternative, remanded to arbitration, pursuant to the parties' contractual grievance procedure.

(2) Whether or not the Town has committed an unfair labor practice within the meaning of RSA 273-A:5 I (e), (g), (h), (i) and/or violated RSA 273-A:3 by dealing directly with a bargaining unit member as to adjustments in her wages, hours and working conditions, unilaterally making such changes, and assigning her to the position of executive secretary without bargaining.

(3) Whether or not the Town has committed an unfair labor practice within the meaning of RSA 273-A:5 I (a), (b), (c), (e), (g), (h), and/or (i) by creating a "non-bargaining unit" Lieutenant's position, as well as an "acting out of rank" provision between the parties, and doing so unilaterally and through direct dealing with members of the bargaining unit.

#### WITNESSES

For the Union:

1. Suzanne Roy

2. Lt. Doug Cardwell, Local Pres.
3. Acting Fire Chief Michael Carrier

For the Town:

1. Dave Caron, Town Administrator
2. Acting Fire Chief Michael Carrier
3. Suzanne Roy
4. Lt. Doug Cardwell, Local Pres.

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 – 6/30/04
2. August 5, 2003 letter to Cardwell
3. September 22, 2003 letter to Roy
4. Amended Certification of Representative, 11/7/95
5. Posting for position of "Acting Captain."

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

The time 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. As referenced above, the Town filed a "Motion to Dismiss, or in Alternative, to Remand to Arbitration" on **November 24, 2003**. Pursuant to the Board's notice of filing, the Union may file a response on or before **December 9, 2003**.

2. Subject to the Board's review of said motion and response, the parties' representatives shall notify the Board no later than **February 1, 2004** if they are able to reach agreement on submitting the case on stipulations of fact and memorandums of law, thereby avoiding the need for an evidentiary hearing before the Board. In the event that they are unable to reach such an agreement, they shall meet, or otherwise confer, on or before **February 11, 2004** 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.

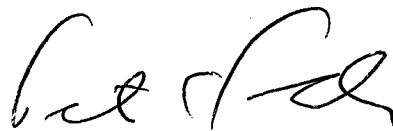
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties is scheduled for:

**March 2, 2004 at 9:30 AM**

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

So ordered.

Signed this 1st day of December, 2003.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:

John S. Krupski, Esq.

Mark E. Broth, Esq.