

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Keene Police Officer's Association	*	
NHFT, AFT, AFL-CIO	*	
	*	
Complainant	*	
	*	Case No. P-0772-1
v.	*	
	*	
City of Keene	*	
	*	
Respondent	*	

Keene Police Department Supervisors	*	
	*	
Complainant	*	
	*	Case No. P-0773-1
v.	*	
	*	Decision No. 2003-148
City of Keene	*	
	*	
Respondent	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Keene Police Officers Association, NHFT, AFT, AFL-CIO (hereinafter "the KPOA" or "Complainant No. 1") filed an unfair labor practice complaint on November 20, 2003 alleging that the City of Keene (hereinafter "the City") committed an unfair labor practice by changing the health insurance plan for bargaining unit members. More specifically, the KPOA alleges that on or about November 12, 2003, its officials learned that the City was accepting a bid with Cigna, instead of GISC medical insurance, the plan that is identified in Article XIII, Section 1 of the parties' collective bargaining agreement ("CBA"). It claims that when the President of the KPOA thereafter expressed his concerns directly to City officials regarding unilateral changes to the medical insurance plan, there was no indication of a willingness to negotiate. Indeed, in its complaint, the KPOA requested that the PELRB grant interim relief, in the form of a cease and desist order, based upon its understanding at that time that the City intended to implement the new insurance on December 1, 2003 and that irreparable harm to the rights of bargaining unit

members would result. The KPOA states that the City's actions in this regard violate RSA 273-A:5 (e), (g) and (h). In addition to a cease and desist order, it seeks relief in the form of a finding against the City that it has committed an unfair labor practice and the payment of restitution by the City to the KPOA, and members of the bargaining unit, for damages caused by its actions.

The Keene Police Department Supervisors (hereinafter "the KPDS" or "Complainant No. 2") filed an unfair labor practice complaint against the City on November 26, 2003, also alleging violations of RSA 273-A:5 (e), (g) and (h), based upon the City's change in health insurance from GSIC to Cigna. The factual background alleged by the KPDS mirrors much of which was raised in the KPOA's complaint. The KPDS also assert that under the Cigna plan, the medical insurance premiums published by the City for KPDS bargaining unity members are in direct violation with the parties' CBA. The KPDS request, inter alia, that the PELRB (1) grant an interim cease and desist order against the City, (2) order the City to cease and desist from changing the contractual health insurance plan, (3) find that the City has committed an unfair labor practice, and (4) order that restitution be paid to the KPDS and members of its bargaining unit as a result of the City's actions.

The City filed its responses to the KPOA's unfair labor practice complaint on December 4, 2003 and the KPDS complaint on December 11, 2003. In summary, the City denies that it has committed any unfair labor practice, stating, among other things, that there has been no change in health insurance plans. It states that the plan is in fact self-insured by the City and that "GISC" refers to the third party administrator contracted by the City to process claims under the self-insured plan. It further maintains that no changes are being made to the GISC "plan" or "policy" as referenced in the CBA, that the same services and medications are covered, and that reimbursement rates and co-pays remain the same. The City also denies any violation of the CBA based upon the calculation of the premium. The City argues that neither the KPOA nor the KPDS can pursue the instant improper labor practice charges for breach of contract since the applicable CBA in each instance contains a grievance procedure with final and binding arbitration. Accordingly, the City requests, inter alia, that the PELRB dismiss both complaints with prejudice and order the Complainant unions to reimburse the City for its expenses and fees in connection with these matters.

On December 2, 2003, the KPDS filed a Motion to Consolidate Case No. P-0773-1 with Case No. P-0772-1. Said motion expressly indicated that counsel for the KPOA had assented to the consolidation of the cases. All parties were present for a pre-hearing conference that was conducted at the offices of the PELRB on December 8, 2003. During the course of the proceeding, and by letter dated December 10, 2003, counsel for the City indicated that the City had no objection to consolidating cases T-0772-1 and P-0773-1.

PARTICIPATING REPRESENTATIVES

For the KPOA (Complainant No. 1): Teresa D. Donovan, Esq.

For the KPDS (Complainant No. 2): Corporal Peter Thomas (for Kenneth J. Meola, Pres.)

For the City: Thomas J. Flygare, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Are the Complainant unions entitled to interim relief pursuant to RSA 273-A:6 III?
2. Does the PELRB have proper jurisdiction in this matter?
3. Can the Complainant unions pursue an improper practice charge on the issues alleged?
4. Has the City committed an improper labor practice, within the meaning of RSA 273-A:5 (e), (g) and/or (h), by making changes to the medical insurance plan for the instant bargaining units?

WITNESSES

For the KPOA (Complainant No. 1) and the KPDS (Complainant No. 2):

1. Officer Jonathan Stewart, Pres., KPOA
2. Officer Bruce Uhas, Steward, KPOA
3. Officer Darryl Madden
4. Officer James Cemorelis, Vice-Pres., KPOA
5. Corporal Peter Thomas, KPDS
6. Sergeant Kelvin Macie, KPDS
7. Kenneth J. Meola, Pres., KPDS
8. Ed Gross, KPDS
9. Edwin Bourassa, KPDS

For the Respondent:

1. Jane Gile, City of Keene, Human Resources Director
2. Martha Landry, City of Keene, Finance Director
3. John MacLean, City Manager
4. Insurance Broker(s)

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 – 6/30/04.

2. Parties' collective bargaining agreement, 7/1/97 – 6/30/00.

For the KPOA (Complainant No. 1) and the KPDS (Complainant No. 2):

1. GISC Medical Insurance Plan.
2. Correspondence, including e-mails, between City and KPOA.
3. E-mail to J. Stewart from D. Madden, dated November 19, 2003.
4. E-mail to J. Gile; J. MacLean, from J. Stewart, dated November 12, 2002.
5. E-mail to J. Stewart from J. Gile, dated November 13, 2003.
6. Memorandum dated November 14, 2003 from J. Gile to City Employees.
7. Calculation sheet, City of Keene Self Funded Medical Plan – Police Officers.

For the City:

1. Selected Insurance Documents (to be identified in accordance with ¶ 4, Decision Section, below).

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 being set aside for this hearing is 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. Upon agreement of the parties, Case No. T-0772-1 and P-0773-1 are consolidated for all future PELRB proceedings.
2. During the course of the pre-hearing conference, counsel for the City indicated his intent to file a Motion to Dismiss. The City's Motion to Dismiss shall be filed on or before **December 19, 2003**. The responses, if any, of the Complainant union's shall be filed with the Board within fifteen (15) days of the filing of the City's Motion to Dismiss.
3. The parties' representatives shall meet, or otherwise confer, on or before **January 2, 2004** in order to compose a mutual statement of agreed facts and they 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.

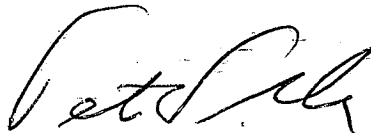
4. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise 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.
5. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
6. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, a hearing between the parties will be held on

January 8, 2004 at 9:30 AM

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

So ordered.

Signed this 15th day of December.



Peter C. Phillips, Esq.
Hearings Officer

Distribution:

Teresa D. Donovan, Esq.
Thomas J. Flygare, Esq.
Peter S. Thomas