



**State of New Hampshire**

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| Town of Pelham  | * |                       |
|   | * |                       |
|   | * |                       |
| Complainant   | * |                       |
|   | * | Case No: P-0775-1     |
| v.  | * |                       |
|   | * | Decision No. 2004-065 |
| AFSCME Council 93, Local 3657,<br>Pelham Police Employees | * |                       |
|   | * |                       |
| Respondent  | * |                       |
|   | * |                       |

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PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Town of Pelham (hereinafter "the Town") filed an improper practice charge on March 10, 2004 alleging that AFSCME Council 93, Local 3657 (Pelham Police Employees) (hereinafter "the Union") committed an unfair labor practice in violation of RSA 273-A:5 II (a) and (f) by demanding that the Town implement an arbitrator's award. More specifically, in an award dated February 8, 2004, an arbitrator ordered the reinstatement of Debra Desmarais, without back pay or other contract benefits, to her former position as police dispatcher. Ms. Desmarais had been discharged from her position with the Town on June 10, 2002 following an internal investigation that determined she had been untruthful. The Town presents the instant complaint after receiving a letter dated February 17, 2004 from Union counsel demanding that the Town reinstate Ms. Desmarais in compliance with the arbitrator's award. The Town contends, *inter alia*, that the arbitrator's award is violative of public policy, to the extent that it requires the Town to reinstate an individual proven to have been untruthful in her official duties and in her sworn testimony. The Town points out that under New Hampshire law, arbitration awards that violate public policy are unenforceable, citing the case of *Appeal of Amalgamated Transit Union, Local 717*, 144 N.H. 325 (1999).

Based upon the Union's demand that the Town implement the arbitrator's award, the Town alleges that the Union has interfered with its proper exercise of its rights under RSA 273-A:1, XI and accordingly violated RSA 273-A:5 II (a) and (f). The Town requests that the PELRB (1) find that the arbitrator's ruling is contrary to public policy, (2) remand the case to the arbitrator in order that he fashion a remedy not violative of public policy, and (3) take such further action as may be just.

The Union filed its answer denying the Town's complaint on April 16, 2004. While it generally admits to the chronological history of the case as set forth in the Town's complaint, the Union denies that it has committed an unfair labor practice. In further response to the Town's complaint, the Union asserts that the Town has failed to state a claim upon which relief can be granted, that the Town's complaint is time barred, that the Town has acted in bad faith, and has otherwise waived any right to now contest Ms. Desmarais' reinstatement. In this regard, the Union counter-claims that in failing to honor the mutually agreed upon arbitration procedure, the Town has itself violated RSA 273-A:5 I (a), (e), (g), (h) and (i). The Union requests, among other things, that the PELRB dismiss the Town's improper practice charge, order the Town to reinstate Ms. Desmarais to her position and make her whole for salary, with interest, from the date of the arbitrator's award, and order the Town to otherwise abide by the mutually agreed upon language in the collective bargaining agreement concerning binding arbitration.

A pre-hearing conference was conducted at the PELRB on April 20, 2004 during which both parties were represented by counsel.

#### PARTICIPATING REPRESENTATIVES

For the Town: Mark T. Broth, Esq.

For the Union: Katherine M. McClure, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

- (1) Does the Town's improper practice complaint violate the six (6) month statute of limitations contained in RSA 273-A:6, VII?
- (2) Has the Union committed an unfair labor practice within the meaning of RSA 273-A:5 II (a) and (f) by demanding that the Town implement the Arbitrator's award reinstating Ms. Demarais to her former position?
- (3) Has the Town committed an unfair labor practice within the meaning of RSA 273-A:5 I (a), (e), (g) and (i) by failing to implement the Arbitrator's award?

#### WITNESSES

For the Town:

1. Peter Heed, Attorney General (or designee)
2. Evan Haglund, Police Chief
3. Marguerite Wageling, Esq., Hillsborough County Attorney's Office
4. Earl Sweeney, Asst. Commissioner, Dept. of Safety

For the Union:

1. Steve Lyons, AFSCME, Staff Representative
2. Deborah Desmarais
3. Dennis Mannion, Chapter Chair, Pelham Police , AFSCME Local 3657

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, 4/1/01 – 3/31/03
2. Parties arbitration briefs submitted to arbitrator
3. Arbitrator's Award dated February 6, 2004
4. Letter dated February 17, 2004 from Attorney McClure to Attorney Broth

For the Town:

1. Dispatcher and Police Officer Job Descriptions
2. Pelham Police Dept. Standard Operating Procedures
3. SPOTS Agreement
4. Attorney General guidelines on *Laurie* decision.

For the Union:

1. Documents re: dispatcher job functions and those of police officers.

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 shall file their respective Motions to Dismiss, if any, with the PELRB on or before **May 20, 2004**.
2. The parties' representatives shall meet, or otherwise confer, on or before **June 1, 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.
3. 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.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
5. 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:

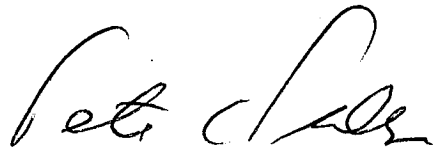
**June 10, 2004 @ 9:30 AM**

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

6. Unless directed otherwise by the PELRB, the parties post-hearing briefs shall be due, postmarked, to the PELRB no later than **June 24, 2004**.

So ordered.

Signed this 4<sup>th</sup> day of May, 2004.



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Peter C. Phillips, Esq.  
Hearings Officer

Distribution:

Mark T. Broth, Esq.

Katherine M. McClure, Esq.