

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Brotherhood of Police Officers,	*	
Local 320	*	
	*	
	*	
Complainant	*	
	*	Case No: P-0723-8
v.	*	
	*	Decision No. 2004-091
Town of Merrimack	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The International Brotherhood of Police Officers (IBPO), Local 320 (hereinafter "the Union") filed an improper practice charge on April 26, 2004 alleging that the Town of Merrimack (hereinafter "the Town") committed an unfair labor practice, in violation of RSA 273-A:5 I (a) & (e), when it rejected a tentative contract settlement reached between the parties. More specifically, the Union states that on or about July 21, 2003, the parties commenced negotiations for a successor agreement and executed negotiation ground rules. Thereafter, as indicated by the Union, the parties participated in numerous negotiation sessions and on November 4, 2003 reached a tentative agreement. However, on or about January 21, 2004, the Union claims that the Town's bargaining team informed the Union that the tentative agreement had been rejected by the Board of Selectmen, that all previously agreed upon contract items were off the table, and that the Town was submitting new proposals across the board. As a result of such conduct, the Union alleges that the Town violated the previously agreed upon ground rules executed by the parties, as well as failed to bargain in good faith. Accordingly, it states that the Town has violated RSA 273-A:5 I (e) and, derivatively, RSA 273-A:5 I (e).

The Town filed its answer denying the Union's charge on April 29, 2004. Although the Town does not dispute the chronology of events as described in the Union's charge, it specifically denies each and every allegation made by the Union that it has violated RSA 273-A. By way of further answer, the Town submits that the negotiation ground rules conditioned approval of any tentative agreement on ratification by the Board of Selectmen and ratification of any cost items by Town Meeting; that the Board of Selectmen exercised its prerogative to reject the tentative agreement; and that following such rejection, the Union had the option of either

resuming negotiations or declaring impasse and availing itself of the dispute resolution mechanisms set forth in RSA 273-A:12.

A pre-hearing conference was conducted at PELRB offices on June 14, 2004 during which both parties were represented by counsel. At the outset of the pre-hearing conference, the Hearing Officer disclosed to the parties that he had previously been employed by, and later served as NH Counsel to, the IBPO. The Hearing officer expressed that he had no personal knowledge as to the facts giving rise to the complaint, and his belief that he could conduct the pre-hearing conference in a fair and impartial manner, but stated that under the circumstances, if asked to do so, he would recuse himself. Given the nature of the instant proceeding, the parties had no objection to the Hearing Officer conducting the pre-hearing conference. The Hearing Officer does recuse himself from any further decision-making or other participation in the PELRB's consideration of the instant matter.

During the pre-hearing conference, the Union was asked to further elaborate as to what specific portions of the negotiation ground rules the Union was claiming had been violated by the Town. The Union responded by referencing, *inter alia*, the obligation to use best efforts to obtain ratification and that neither party was to make new proposals following the third bargaining session. The Union was also asked to specify what relief it was seeking through the instant complaint, to which it answered that the Town be ordered to submit the tentative agreement to Town Meeting for a ratification vote. In response, the Town stated that regardless of the merits of the Union's claim, such relief is not within the authority and jurisdiction of the PELRB to grant. The Union was directed by the Hearing Officer to put its requests for relief in writing, in accordance with PELRB rules, no later than July 1, 2004.

PARTICIPATING REPRESENTATIVES

For the Union: Julia E. Fahey, Esq., IBPO Counsel

For the Town: Mark T. Broth, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Did the Town commit an unfair labor practice within the meaning of RSA 273-A:5 I (a) and/or (e) by its conduct in rejecting a tentative agreement reached by the parties for a successor agreement?
- (2) Is it within the PELRB's jurisdiction and authority to grant the relief being sought by the Union?

WITNESSES

For the Union:

1. Edward Pane, Pres., IBPO Local 320

For the Town:

1. William Wardwell, Town Negotiator
2. Sharon Beland, Human Resources Assistant, Town of Merrimack

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. Negotiation ground rules - 7/21/03
2. Tentative agreement - 11/4/03
3. Town proposals - 1/20/04

For the Union:

1. Union's negotiation notes

For the Town:

1. Town's negotiation notes.
2. Minutes of Selectmen's meeting.
3. Tapes and/or transcripts of Selectmen's meeting(s)

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 (1/2) 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

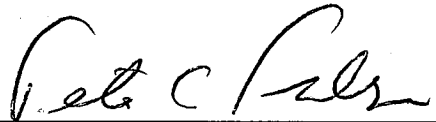
1. On or before **July 1, 2004**, the Union shall file an original and five (5) copies of an amended improper practice complaint, or other appropriate written correspondence, wherein, in accordance with Pub 201.02(b)(6), it shall describe any and all remedies it is seeking under RSA 273-A, and it shall furnish a copy of same to the Town's representative.
2. The parties' representatives shall meet, or otherwise confer, on or before **July 30, 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

August 19, 2004 @ 9:30 AM

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

So ordered.

Signed this 18th day of June, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Julia E. Fahey, Esq.

Mark T. Broth, Esq.