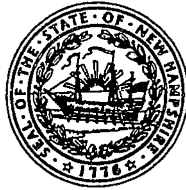


State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Local 1984, SEA, SEIU Seabrook Employees Association Complainant v. Town of Seabrook Respondent	Case No. M-0575-20 Decision No. 2004-103

APPEARANCES

Representing the Seabrook Employees Association, SEA, SEIU Local 1984:

Jeffrey Brown, SEA Field Representative/Negotiator

Representing the Town of Seabrook:

Robert D. Ciandella, Esquire

BACKGROUND

Local 1984 SEIU, Seabrook Employees Association ("the Union") filed an unfair labor practice charge on March 5, 2003 alleging that the Town of Seabrook ("the Town") and its agents have pursued a pattern of conduct with the effect of restraining, coercing or otherwise interfering with its employees in the exercise of those employees' rights provided under RSA 273-A:5, I(a); pursued a pattern of conduct that discriminates in the tenure or terms and conditions of employment of its employees for the purpose of discouraging membership in the employee organization certified to be the bargaining unit's exclusive representative in violation of RSA 273-A:5, I (c); and pursued a pattern of conduct that discriminates against the bargaining unit's president and other union members because of complaints filed and testimony given before the Public Employee Labor Relations Board ("PELRB") in previous proceedings in violation of RSA 273-A:5, I (d). The Union also alleges that the Town's unilateral actions regarding wages, benefits and other terms and conditions of work constitute a refusal to negotiate

in good faith in violation of RSA 273-A:5, I (e), and (i); and that the actions of the Town that constitute the alleged acts appearing in the Union's complaint also constitute the Town failing to comply with the provisions of RSA 273-A:5 (g) and have resulted in a breach of the parties' collective bargaining agreement in violation of RSA 273-A:5, I (h).

The Town filed its response with the PELRB on March 20, 2003 in which it denied all allegations contained within the Union's complaint with the exception of its acknowledgement that the Union represents certain employees working for the Town. It raised several defenses, including: (1) that the Union has failed to state a claim upon which relief can be granted; (2) that the issues are not ripe for adjudication; (3) that the Union's claims are barred by the doctrine of *res judicata*; (4) that the Union's claims are barred by the doctrine of *collateral estoppel*; and (5) that the Union's claims are time-barred by the six-month statute of limitations.

The Union requests relief in the form of a cease and desist order against the Town and an order that the Town award the Union its reasonable costs, including costs of representation necessary to bring forward this complaint. For its part, the Town seeks a dismissal of the Union's complaint, requests an interim briefing schedule to adjudicate the defenses it has raised and also seeks an award of reasonable attorneys' fees and costs necessary to its defense of this complaint.

In accordance with the schedule set forth in a pre-hearing order issued on April 16, 2003, the Town filed a Motion to Dismiss on May 5, 2003, in response to which the Union filed its objections on May 14, 2003. A Board hearing scheduled for May 20, 2003 was postponed and was rescheduled for June 18, 2003. On June 11, 2003, the parties filed a Joint Motion to Continue, wherein they expressed their agreement to "facilitate a comprehensive discussion of their labor-management relationship" for a ninety (90) day period. The Board granted the parties' motion on June 18, 2003 (Decision No. 2003-059), directing the parties "to attempt to resolve as many, if not all, of the outstanding issues in the pending unfair labor practice complaint through their own efforts..." Following the submission of progress/status reports by the parties, in accordance with the Board decision, the Union representative notified the Board by letter dated September 23, 2004 that it was exercising its option, also in accordance with the Board decision, to re-activate the case and move it to hearing. A hearing was scheduled for November 18, 2003, and following the filing of an assented to motion for continuance filed by the Town, the matter was rescheduled for January 29, 2004.

The parties' representatives met with the Board's Hearing Officer on January 22, 2004 in the context of a final "pre-trial" conference. Thereafter, the parties filed a "Joint Stipulation of Parties as to Submission of Case" and a "Joint Stipulation of Facts" on January 28, 2004. In conjunction therewith, the parties agreed, inter alia, that no witnesses would be called to testify at the January 29, 2004 hearing, that the Union was withdrawing paragraphs 9, 12, 16, 17, 18, 19, 23, 24, 28, 30, 31, 32 and 33 from its complaint, that the facts as alleged in paragraphs 7, 8, 10, 11, 14, 20, 21, 25, 26, 27 and 29 of the complaint are submitted through judicial notice, that the facts as alleged in paragraphs 22, 34, 35, and 36 are submitted through means of grievance and settlement documentation, and that the facts as alleged in paragraphs 13, 15, and 37 are submitted by way of joint stipulation.

A hearing was convened at the offices of the Public Employee Labor Relations Board in Concord on January 29, 2004 at which both parties were represented and presented exhibits and argument. The Board accepted the parties' joint stipulation of facts and their joint stipulation as to submission of the case, including the Town's request to file a post-trial memorandum. Following receipt of the Town's post-hearing memorandum of law on February 25, 2004, the record was closed. Upon review of all filings submitted by the parties and consideration of all relevant evidence, the Board determines the following:

FINDINGS OF FACT

1. The Town of Seabrook ("the Town") employs personnel in the operation of its town government and constitutes a public employer within the meaning of RSA 273-A:1, X.

2. The Seabrook Employees Association, SEA, S.E.I.U. Local 1984 ("the Union"), is the certified bargaining agent for the following employees employed by the Town:

   Clerks-Selectmen's Water Dept., Recreation Dept., and Asst. Appraiser's, Custodians-Town Office, Highway Dept., Water Dept., and Recreation Dept., Laborers & Equipment Operations-Highway Department and Water Department Laborers & Equipment Operations-Highway Department and Water Department, Police Dispatchers, Secretary to Police Chief, Secretary to the Selectmen, Working foreman, Wastewater /water operator, Janitor, Equipment operator/CDL/ laborer and clerk.

   (Amended certification M-0575, dated December 21, 2000.)

3. The Town issued a memorandum dated August 1, 2002 prohibiting Union members from conducting Union business during work time with the Town. The Union objected to this memorandum and the Town subsequently withdrew its memorandum. The Town did not enforce the memorandum and no grievance was ever filed by the Union regarding the memorandum. (Joint Stipulation of Facts, dated January 28, 2004)

4. Mrs. Cora Ella Eaton Stockbridge found a caricature on the bulletin board in the Selectmen's office (copy submitted into evidence) with the initial CEES inscribed on the front of such caricature. The original sketch was made by Selectmen Asa Knowles, and although he was not drawing Ms. Stockbridge, the caricature was modified at some later date to include Ms. Stockbridge's initials. After the complaint was filed, the Board of Selectmen became aware that the caricature had been posted on a bulletin board in the Selectmen's office, and it was removed. The Selectmen's office is not available to the public or uninvited employees. (Joint Stipulation of Facts, dated January 28, 2004). (The caricature at issue is presented into the record as Union Exhibit No. 19).

5. By way of letters dated August 22nd, September 3rd, and September 18th, 2002, and numerous subsequent conversations, the Union requested from the Town and through its attorney copies of all invoices for all contracted legal services by the Town during calendar year 2002. Counsel for the Town responded to such request indicating that the requested documents consisted of detailing billing records and contained information protected by the attorney-client privilege; however, he subsequently suggested that the Town could provide redacted copies of such invoices provided that the redacted versions did not compromise attorney/client privilege. The Union agreed to such redaction; however, the Town failed to provide the Union with the requested invoices. (Joint Stipulation of Facts, dated January 28, 2004, Union Exhibits 16, 17, 18).

6. The PELRB takes judicial notice of Case No. M-0591-38, wherein it made the following findings of fact, among others, in its Decision No. 2003-070 (June 19, 2003):

> ¶4. The Town brought this complaint because of alleged union-sponsored activities adverse to Lynn Willwerth, a full-time Town employee since 1992 and the sewer clerk, a bargaining unit position, for the past five years. She ceased her union membership in 1998 and now claims, by her testimony, that the Union treats her differently than other employees, discriminates against her and harasses her by trying to deprive her of benefits accorded to other members of the bargaining unit. Her allegations, identified by counsel for the Town in opening remarks as the result of the several updates or amendments to the original ULP, involve four incidents, namely, (1) the July 9, 2002 meeting confrontation, (2) the challenge to her callback pay in July of 2002, (3) a newsletter article, and (4) her attempt to be put on an overtime call list as referenced in CBA Article XIII.
>
> ¶5. On May 24, 2002, Willwerth was called back from vacation (annual leave) to work on a project involving the sewer department and was paid for a three hour call-back under Article 13.3 of the CBA. Town Ex. No. 3, page 26. This prompted a letter dated July 3, 2002 from Union representative Brian Mitchell to then Town Manager Bailey (Town Ex. No. 2) inquiring about the incident, to wit:
>
>> The Union is requesting from the Town, its interpretation of an incident that occurred on May 24, 2002.
>>
>> On May 24, 2002, there was a clerical employee on vacation for her 8-hour shift. Her supervisor called this employee during her regular work shift to come in to work. This employee was paid for a 3-hour call in.

It is the Union[']s interpretation of the CBA Article 16.1.7. "No employee shall be entitled to work his/her vacation with pay unless special authorization is granted by the Town Manager." The way we read this is if an employee is called in from vacation he/she should get their vacation accrual adjusted for time worked not paid overtime.

The union is requesting in writing from you, the town[']s interpretation of this event so that this can be applied to all employees equally.

Please feel free to contact me if you should have any questions.

Willwerth was offended by this challenge to her being called in from vacation to work on a job-specific project (hook-up data), being paid for it on an overtime basis, and having this challenged by Mitchell's suggestion there should have been an adjustment to her vacation accrual, above, instead of time and a half compensation. Willwerth said overtime pay was the practice for such call-backs, not vacation accrual adjustments, and that she was singled out for scrutiny. Willwerth testified that she had filed a grievance, not in evidence, some time ago, about overtime eligibility because Union president Stockbridge was getting it and she (Willwerth) was not. She also said she had been told it was not grievable. Willwerth is not the only non-union member in the bargaining unit.

¶6. On July 9, 2002, Willwerth was asked by Supt. Warner Knowles to attend a meeting to take notes about a discussion involving call back procedures, a task which she said was not uncommon for her to perform. She testified that, during that meeting, George Eaton, vice president of the union and an equipment operator said, "I will not sit here with her. She is a non-member." She heard Knowles admonish Eaton by saying "We're not getting into personalities here" and warned him he would be reprimanded if he left the meting. Eaton left anyway, but returned later before the meeting concluded. Willwerth said this was not the first time Eaton had done something like this to her. She complained that it affected her concentration and also spoke to Knowles about it after the meeting.

¶8. On or about January 3, 2003, Willwerth volunteered to go on the call list for snow plowing in anticipation of a forecasted storm. She testified that she had prior experience in snow plowing for Public Works and, if using a small truck, did not need a commercial drivers license. Following the anticipated storm Willwerth expressed concern to DPW Manager John Starkey about why she was not called in. Starkey wrote her a letter (memo) of explanation on January 10, 2003 (Town Ex. No. 5) which reiterated his utilization of personnel from both the departmental and

general call lists and a meeting he had with Union president Stockbridge, to wit:

> You should also know that I have this week met with Mrs. Cora Stockbridge President of your bargaining unit Seabrook Employees Association Chapter 12 Local 1984 and she has vehemently told this writer that your union does not want or will not allow Clerks and Secretaries to be included on the general call list.
>
> In as much as I have told Cora that I would welcome your inclusion on the aforementioned call list I think it is best if you would redirect this point back to your Bargaining Unit/Union. I believe that their sticking this point is that your job description does not include the work you are requesting. You should know that I have offered to maintain a new list which would be members of their Bargaining Unit/Union who are qualified to do the winter work but who's job description does not specifically include this type of work.
>
> Finally I am surprised that your bargaining unit/union would not want Secretaries/Clerks of their membership on the call back list. As this union is having some difficulty supplying the Town with 4 CDL driver during storms of this size.

Willwerth responded to Starkey by memo of January 16, 2003, taking issue with his decisions, reasserting her qualifications and seeking compensation for 19 hours worked by a part time employee as well as placement on the call list. Town Ex. No. 6.

¶9. Philippe Maltais is the chief operator at the wastewater treatment plant where he manages both the staff and operations. He attended the July 9, 2002 meeting mentioned in Finding No. 6. He testified that he called the meeting and that Willwerth was asked to attend as a staff member because she customarily took notes. Maltais said George Eaton was called as a member of his working staff, not in his capacity as a union officer. The meeting was called to correct worker misunderstandings about overtime procedures. While Maltais and operators were in his office waiting for Warner Knowles, he heard Eaton say he was not staying because Willwerth was not a dues paying member. Knowles apparently had arrived by this time because Maltais described Knowles's response which instructed Eaton that the meeting was not for union purposes, but was about overtime and who qualifies for it. Maltais described Eaton as "agitated." Eaton did leave, to return later during the meeting and announce he was only going to participate as an "observer." Eaton's on-going comments about Willwerth and overtime caused Knowles to tell

him to leave Willwerth out of the discussion and stop bickering about overtime. Before the end of the meeting, Willwerth departed from her role as note taker and started arguing with Eaton and others who supported his position. After the meeting ended, Willwerth came to his (Maltais') office, more upset than she had been during the meeting. She told him she was "tired of being the target of these attacks" and she wanted something done soon. The Town Manager was called in to discuss issues of inappropriate behavior with her.

¶12. Stockbridge said she knew about the July 9, 2002 meeting because she discussed it with Warner Knowles. Knowles told her George Eaton asked for the meeting because he wanted to discuss a Ralph Marshall grievance matter. Thus, it would have been more appropriate for a non-unit, confidential employee named Wetherington to have been asked to be note taker rather than Willwerth, a non-member. On cross-examination, Stockbridge testified she understood the July 9, 2002 meeting to be a grievance hearing where Eaton was pursuing Marshall's grievance about being skipped over on the call list and, thus, being denied overtime. Marshall had also been working with Stockbridge about having his grievance heard. This is why he obtained a copy of the newsletter (Finding No. 7, Town Ex. No. 4) from her. Stockbridge testified she obtained the newsletter in the mail but did not contribute to or distribute it. She knew that it contained comments critical of the selectmen's failure to process grievances at their level.

¶13. Stockbridge testified that Warner Knowles asked her about the Union's position relating to putting secretaries and clerks on the call list, identified in Finding No. 3, CBA Article 13.2. Stockbridge said the Union would frown on this and felt this matter had been settled by the grievance and subsequent side-bar agreement signed by the parties (she was a signatory along with Russell Bailey) on November 29, 2000. Union Ex. No. 1. That agreement delineated both departmental and town-wide call lists, neither of which contained clerks generally nor Willwerth's name in particular. It provided, *inter alia*, that, "for sewer department call out needs, the wastewater treatment plant employees will be called out first, followed by water/sewer personnel and if there is a need for additional personnel, the town wide list will be used. Employees will be called out with respect to their qualifications." Stockbridge said that there is no provision for the call back of someone who is not on the call back list, therefore, she was concerned by Willwerth's 2003 attempt (Town Ex. No. 6) to be placed on the call back list without involving the Union, a signatory to the November, 2000 grievance resolution in Union Ex. No. 1. Chronologically, Stockbridge said DPW Manager John Starkey had sought her out about Willwerth's request for overtime plowing pay and inclusion on the general call list as recited in Town Ex. No. 5 which is quoted in Finding No. 8, above. After conferring with Stockbridge,

Starkey denied Willwerth's claim/request/grievance by his memo of January 10, 2003. Town Ex. No. 5. This prompted a new appeal by Willwerth to Starkey on January 16, 2003. (Town Ex. No. 6). Stockbridge testified that Starkey denied this claim, too, only to be reversed by the then acting town manager, Joe Titone. This reversal prompted two unit member grievances and an association grievance.

¶14.George Eaton has worked for the Town 7 ½ years, is a wastewater treatment plant operator and has been active in the local union as Vice President, steward and counselor. He testified that the July 9, 2002 meeting was called for the purpose of discussing a pending, not-yet-reduced-to-writing grievance where Ralph Marshall had been skipped over on the call-back list. Eaton said the Marshall grievance had been filed with Knowles and that July 9, 2002 was the hearing before Knowles relating to it. By way of substantiating his belief this set of circumstances, Eaton said Mike Colin was asked to leave the meeting because he was on the water department rotation list. If it had been a staff meeting, according to Eaton, Colin would have been expected to stay for the meeting. Eaton recalled that he entered the meeting by announcing he was there as union steward whereupon he asked Knowles to ask Willwerth to leave. After Eaton left the meeting, contrary to the instruction given by Knowles, Eaton contacted Stockbridge, who called Bailey, who called Eaton and told him to return to the meeting. Eaton said, "There wouldn't have been a meeting if I didn't request it." Although Knowles asked Willwerth to attend the meeting to take notes, Eaton did not see her taking any. He described her as being active in the call back discussion and as doing fifty percent of the talking. On cross-examination he said she "took the meeting over, right out of my hands." Eaton complained to Knowles saying, "I am here as a union steward, Warner." Likewise, Eaton confirmed that Knowles did discipline him for leaving the meeting contrary to a direct order. Eaton explained that he did represent Marshall "when I returned" but that Knowles denied the grievance at this informal, pre-written-grievance step. Eaton said that the meeting, as it progressed, turned into a discussion about Willwerth working a call back on an overtime basis during what would normally be her working hours.

¶16.Curtis Slayton is a water and sewer foreman and a seven year employee of the Town. He attended the July 9, 2002 meeting relating to Marshall's call-back grievance, heard Eaton ask Colin to leave because this was a grievance issue which did not involve him, and heard Eaton say "I'm here as steward." Slayton recalled that the July 9, 2002 meeting started as a grievance hearing and progressed into a discussion about call-back procedures. Likewise Slayton recalled the May 24, 2002 call-back when Willwerth worked in an overtime capacity due to concerns about hookups at the Fields Project. He said he saw her meeting with "the Fields Project people" at the office, sometime between 1:30 and 2:30 which would have

been during her normally scheduled work hours. On May 1, 2003 the Town subsequently filed a motion to reopen the record in these proceedings for the limited purpose of impeaching Slayton's testimony, asserting that Town records show that Slayton was not working on May 24, 2002 because he was on annual leave. On May 15, 2003, the Union filed an objection to the Town's motion to reopen saying Slayton could have been at the Office "for one of any number of legitimate reasons" on his day off.

¶17. Tarnya Cody, a 14 ½ year employee of the Town, is secretary to the chief of police and a member of the bargaining unit. She has served eight years on the union bargaining team and handles the payroll for the police department. She testified that it is the policy that overtime is paid over 40 hours or outside normal work hours, but call back from vacation, during normal work hours, is not compensated at time and a half. It is only credited towards leave time not actually taken. Cody is also the senior secretary in the bargaining unit. She feels putting clerks and secretaries on the call back list opens a "can of worms" and needs to be negotiated if that change is to be made. Likewise, as senior secretary, if secretaries are to be called back to work, she believes she should be called first, as asserted in a grievance on this topic which Stockbridge filed for her.

7. The Union filed a grievance regarding the payment of a clothing allowance to clerical employees on December 23, 2002, which was later settled by the parties in a written agreement dated May 30, 2003. The Union filed grievances regarding the overtime call list on February 28, 2003 and March 10, 2003, which were later settled by the parties in a written agreement dated July 1, 2003.

8. The PELRB takes judicial notice of Case No. M-0591-36, wherein it made the following findings of fact, among others, in its Decision No. 2002-105 (May 23, 2003):

¶4. At the time this ULP was filed, the Town asserted that there were 22 union grievances waiting to be heard by the Board of Selectmen at Step IV, CBA Article 10.8.1, which appears above. The Town further asserted that it had scheduled these 22 grievance matters to be heard at 4:00 p.m. on business days because (1) the work schedule of two selectmen had changed, (2) other matters of Town business occupy the selectmen's time "during morning and earlier afternoon hours" and (3) the parties' CBA contains no requirement that Step IV grievances be "heard before 4:00 p.m. or at any other particular time." See ULP, para's. 2, 3, 4, 6 and 7, all (except para. 4) having been admitted in responsive pleadings. In addition, the Town claims that the Union has refused to meet at 4:00 p.m. on these 22 grievances and by doing so has violated 273-A: 5 (b) as well as the requirement to have and operate under a "workable grievance procedure"

pursuant to RSA 273-A: 4. The last element of the ULP is the Town's claim, in paragraph 10, of illegal surveillance and monitoring of selectmen.

¶5. By way of answer, the Union has claimed that the Town has unilaterally changed a past practice of 17 years' duration by scheduling Step IV grievance hearings at 4:00 p.m. and that this change is responsible for the case backlog. Moreover, the Union claims that the Town has set hearing dates for some of the pending grievances, but not all of them. (Answer, para's. 4 and 8.) The Union also rejected the proposition that it had refused to meet with the Town, citing a meeting held on April 9, 2002 at 4:30 p.m., approximately a month before the ULP was filed. This was substantiated by a letter from Cora Stockbridge, chapter president, also dated April 9, 2002, in which she filed a "protest against meeting after normal working hours. It has been the practice for the past 17 years to conduct grievance hearings during normal working hours...." (Union Ex. No. 9.) She had filed a grievance on the same subject on March 28, 2002. (Union Ex. No. 2.).

¶6. On April 15, 2002, selectmen Karen Knight and Oliver Carter wrote a letter to SEA Representative Brian Mitchell (Jt. Ex. No. 3 and Union Ex. No. 10) about the Union's "Step IV grievance hearings should be during working hours" grievance (Union Ex. No. 2) which they denied. The letter said, *inter alia,* "The contract language does not say what time we should meet and we have...not violated any contract language. The idea of past practice is not relevant, as board of selectmen...change and their personal work schedules may not allow for a meeting during the day unless some type of emergency. It is not unusual for grievance meetings to be held after hours." On April 30, 2002, Mitchell proposed the name of three "Step V" arbitrators to then Town Manager Bailey. (Union Ex. No. 5.) This was followed by Mitchell's request for a list of arbitrators from the PELRB on May 21, 2002. (Union Ex. No. 6.) The Town filed the instant ULP on the following day.

¶7. E. Russell Bailey, who has since taken other employment, had been Town Manager for 10 years. He explained that the Town has a work force of 120 with 4 unions. He stated the selectmen usually meet weekly on Wednesday mornings or sometimes at 7:00 in the evening. Priority for daytime meetings is given to budget matters with department heads and welfare cases, primarily because of the nature of the employees involved. After the grievance backlog reached 23 cases, Knight and Oliver approached him and said this was impacting their work schedules, i.e., non-selectmen duties. After that, the Town offered to split Step IV grievance meeting times with the Union, some during working hours and some at 4:00 p.m. This was rejected. In April of 2002, the Union also

offered to meet at 8:00 a.m., before the regular Wednesday selectmen's meeting to process Step IV grievances but this did not materialize.

¶11.Karen Knight currently chairs the selectmen and is a full-time registered nurse. Under Bailey's administration she devoted 20 hours per week to town business. Now, with an interim manager, she spends 30-35 hours a week on those chores. She testified that the daytime hearing of Step IV grievances stopped in late 2001 or early 2002, long before and unrelated to Bailey's taking new employment. She stated her objection to being watched outside the town hall or to being "followed around." She felt being watched coming and going from the Town Hall was the equivalent of "stalking." She complained about the grievance load, saying, by comparison, the other [three] unions had two grievance hearings in five months. She was a proponent of splitting grievance hearings for this unit, half on the clock and half off, but the union rejected the concept. She knew the Union had offered 8:00 a.m. meetings on Wednesday mornings but the selectmen "could not work it into our schedules." When Knight first became a selectman, she acknowledged she used to attend Step IV grievance hearings during working hours "but my job was different then. This Board of Selectmen is not subject to the decisions of prior boards." She stated that the Town is not asserting a time bar on grievances waiting processing during the pendency of this case.

¶12.Asa Knowles has been a selectman for 13 years. He said he used to be able to solve grievances with the unions. All the Step IV hearings used to be during the day; only the planning board met in the evening in those days. Knowles said the procedures for after-hours versus day Step IV grievance hearings changed when there were nine cases awaiting review by the selectmen. He asked Bailey why they were not consolidated for processing but received no answer. "When we got the new head of the Board [of Selectmen], we didn't have them [daytime grievance hearings] anymore." Knowles said, " I think it's wrong. Just as fast as they [the grievances] come, we should get rid of them." "When Karen Knight became head of the Board, that's when our problems started.... We have a meeting every Wednesday; we can get these grievances out of the way before and after our regular meetings." Knowles observed that a quorum of two selectmen can run the Step IV grievance reviews.

9. In a memorandum dated May 23, 2003 to the Payroll Department, Town Manager Fred Welch authorized the payment of certain "school grievances" in accordance with the Town's agreement to do so.

10. The Union filed a grievance on January 13, 2003 regarding the assignment of standby duty to certain employees, which was later settled by the parties in a written agreement dated June 27, 2003.

11. On March 6, 1999, an arbitrator's award was issued finding that the Town had violated the parties' collective bargaining agreement relative clothing allowance. The arbitrator ordered that a June 16, 1997 memo of the Town Manager, that established a monetary cap on the purchase of certain clothing and safety equipment, shall be rescinded.

12. The PELRB takes judicial notice of Case No. M-0575-14, wherein it issued Decision No. 2003-055 (June 10, 2003). (See Town Exhibit No. 4-G).

13. The PELRB takes judicial notice of Case No. M-0591-32, wherein it issued Decision No. 2001-115 (November 21, 2001) following the parties' settlement of same. (See Town Exhibit No. 3-H).

ORDER

JURISDICTION

The New Hampshire Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5. RSA 273-A:6, I. The PELRB is also authorized to determine whether such claims are filed in conformity with the six (6) month statute of limitations set forth in RSA 273-A:6, VII. As the Union has raised numerous allegations of unfair labor practices against the Town in the instant matter, specifically citing violations of RSA 273-A:5 I (a), (c), (d), (e), (g), (h) and (i), the PELRB's jurisdiction is appropriate under the circumstances.

DECISION

The Town's Motion to Dismiss is granted in part and denied in part, and the remaining allegations set forth in the Union's complaint are dismissed. As the following discussion describes, portions of the complaint violate the six-month statute of limitations set forth in RSA 273-A:6, VII, and are otherwise moot, by either constituting previously settled contract claims or disputes upon which the PELRB has previously ruled. Finally, still other portions of the Union's complaint are dismissed because of insufficient evidence of violations of RSA 273-A:5 I.

DISCUSSION

The Union contends that by virtue of various actions and conduct of Town officials, as set forth in its broadly worded and voluminous complaint, the Town has violated RSA 273-A:5 I (a), (c), (d), (e), (g), (h) and (i). Following the Union's withdrawal of paragraphs 9, 12, 16, 17, 18, 19, 23, 24, 28, 30, 31, 32 and 33, the remaining allegations contained with the complaint still cover a total of twenty-five (25) separate paragraphs. The Town filed a Motion to Dismiss on May 5, 2003, asserting that under various legal doctrines, the Union's case cannot be permitted to proceed on its face. These included the contention that portions of the Union's complaint are time barred by the six-month statute of limitations, that the Union has failed to exhaust the arbitration remedies provided for under the terms of the parties' contractual grievance procedure

for certain allegations, that the Union has failed to state a recognizable legal claim in numerous instances, and that the legal principles of res judicata, collateral estoppel and ripeness bar certain allegations from proceeding as well. In light of the broad scope of factual and legal issues presented in the instant case, we will proceed with a review of the remaining and various factual allegations, while noting the Union's contention that the evidence presents a continuing violation or "pattern" of illegal conduct, and taking into consideration the various defenses raised by the Town in its Motion to Dismiss.

In Paragraphs 10 and 11 of its complaint, the Union alleges that:

...the Town has targeted Ms. Cora Stockbridge, chapter president of the [Union], for her membership and leadership role in the [Union] and for her activities on behalf of the bargaining unit members represented by the [Union].

Specifically, the Town held Ms. Stockbridge up to public scrutiny and ridicule by filing frivolous and specious charges of discrimination against her in retaliation for her having conscientiously and unabashedly fulfilled her role as administrator, advocate and "policeman" of the terms and conditions of employment set forth by the parties in their Collective Bargaining Agreement...said charges filed by the Town on August 2, 2002, October 21, 2002, and again on March 3, 2003;

The evidence presented by the Union in support of this allegation consists solely of the Town's Improper Practice Charge filed in PELRB Case No. M-0591-38, as well as the Town's first amended and second amended charges in the same case. Setting aside the applicability of any aforementioned legal doctrines to the instant allegation, the evidence offered simply does not support the Union's charge. The only facts that the evidence establishes is that the Town filed a complaint, and thereafter made two amendments to it. In other words, the fact that a complaint is filed does not mean that it is proven. The PELRB issued its ruling in Case No. M-0591-38 (See Decision No. 2003-070, June 19, 2003), and while it dismissed the Town's charge, it did not find the complaint to be either "frivolous or specious." Accordingly, we dismiss this portion of the Union's complaint.

In Paragraph 13 of its complaint, the Union alleges that:

...[T]he Town has sought to punish Ms. Stockbridge for policing violations of the CBA and for providing testimony in front of the NH Public Employee Labor Relations Board. In retaliation for having questioned the veracity of Selectmen Karen Knight and Oliver Carter when they asserted their unavailability to meet with the Association to process grievances during the day, the Town issued a memorandum prohibiting the Association's officers from conducting union business on work time; this, in spite of the seventeen year past practice of allowing the chapter president and stewards to process union-related complaints, grievances, etc., during the work day...said memorandum dated August 1, 2002;

On its face, this allegation raises a statute of limitations issue, since the action complained of occurred on August 1, 2002 and the instant charge was not filed until March 5,

2003. Indeed, RSA 273-A:6, VII provides, in relevant part, that "the board shall summarily dismiss any complaint of an alleged violation of RSA 273-A:5 which occurred more than 6 months prior to the filing of the complaint..." and thus this allegation is dismissible on this basis alone. The Union contends in its' memorandum of law in support of its objection to the Town's Motion to Dismiss that "an employer's activity occurring beyond a statute of limitations may be a part of a single unlawful employment practice, i.e., a continuing violation, if one or more other violations occurred within the limitation period..." Complainant's Objection to Respondent's Motion to Dismiss, p. 2. (citations omitted). However, even if we were to accept the allegation as part of a "continuing violation," the evidence simply does not support a finding of any improper practice. The sole evidence offered regarding this allegation is the parties' stipulation, submitted to the PELRB on January 28, 2004, that:

> The Town issued a memorandum dated August 1, 2002 prohibiting Union members from conducting Union business during work time with the Town. The Union objected to this memorandum and the Town subsequently withdrew its memorandum. The Town did not enforce the memorandum and no grievance was ever filed by the Union regarding the memorandum. (See Finding of Fact No. 3, above).

Based upon this statement of fact, it appears that the parties appropriately resolved the issue on their own. Whether or not the Town committed an improper practice by issuing the August 1, 2002 memorandum, the matter is now moot. Accordingly, we dismiss Paragraph 13 of the Union's complaint.

In Paragraph 14 of its complaint, the Union alleges that:

> *Selectman [Karen] Knight sought to punish Ms. Stockbridge for having questioned the veracity of her and Selectman Carter's assertions regarding their unavailability to meet with the Association during the day, and she attempted to coerce Ms. Stockbridge from fulfilling her role as the Association's chapter president in the manner that she (Ms. Stockbridge) deemed appropriate. On April 10, 2002, Chairman Knight filed an inappropriate and specious stalking complaint against Ms. Stockbridge with the Seabrook Police Department (in response to and in retaliation for Ms. Stockbridge having noted the presence of Selectmen Knight and Carter at the Town Hall during those hours the selectmen claimed to be unavailable to meet with the Association, its members or its certified Union Representative);*

This allegation violates the six-month statute of limitations provided for under RSA 273-A:6, VII, and while it may be of a continuing nature, the Union has provided no evidence in support of its claim other than a vague reference to testimony in PELRB Case No. M-0591-38 (Decision No. 2003-070). Indeed, the Union does not identify witnesses or a specific segment of testimony in the case that we should consider, other than "testimony provided by witnesses, not referenced in [the decision], that established the referenced action by Karen Knight." (See Complainant's Stipulation of Facts, p. 3, ¶12). Moreover, even accepting that Ms. Knight filed a stalking charge against Ms. Stockbridge, this fact alone does not rise to the level of an improper

practice charge without more information. We therefore dismiss this paragraph of the Union's charge.

In Paragraph 15 of its complaint, the Union alleges that:

Selectmen Knight and / or Carter have openly subjected Ms. Stockbridge to public ridicule by displaying a caricature resembling Ms. Stockbridge on one of the bulletin boards above their desks in the Selectmen's office...in full view of Ms. Stockbridge's fellow employees and members of the public who might have business in the office. The caricature has the initials C.E.E.S. written across the figure (we offer that the initials represent Ms. Stockbridge's full name: Cora Ella Eaton Stockbridge) and has horns drawn atop the head of the caricature – similar to devil's horns...this behavior continues to this date;

The Town contends that this allegation must be dismissed because it does not adequately state a recognizable cause of action under RSA 273-A:5. While we dismiss this portion of the Union's improper practice charge, we do so based upon other grounds. Despite the relative lack of specificity throughout its' complaint, we may nevertheless presume that the Union is claiming that the referenced caricature of the Union's chapter president constitutes some sort of interference with her and/or other Union members' exercise of their rights under the law. RSA 273-A:5 I (a) does establish that it is a prohibited practice for any public employer "to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by..." RSA 273-A. In *Appeal of Sullivan County*, the New Hampshire Supreme Court held that "the union must prove some minimal degree of illegal motivation on the part of the employer to commit an unfair labor practice before the PELRB can find that RSA 273-A:5, I (a)...has been violated." *Appeal of Sullivan County*, 141 N.H. 82, 88-89 (1996). The Court has also held that the union must demonstrate that the employer's conduct constituted "interference" under the statute. *Appeal of City of Portsmouth, Board of Fire Commissioners*, 140 N.H. 435 (1995). Here, the Union simply has not satisfied its evidentiary burden(s) in this regard.

The sole evidence offered by the Union in support of its allegation is a copy of the caricature itself (Union Exhibit No. 19) and the following stipulation, signed by the parties:

> Mrs. Cora Ella Eaton Stockbridge found a caricature on the bulletin board in the Selectmen's office...with the initial CEES inscribed on the front of such caricature. The original sketch was made by Selectmen Asa Knowles, and although he was not drawing Ms. Stockbridge, the caricature was modified at some later date to include Ms. Stockbridge's initials. After the complaint was filed, the Board of Selectmen became aware that the caricature had been posted on a bulletin board in the Selectmen's office, and it was removed. The Selectmen's office is not available to the public or uninvited employees. (Joint Stipulation of Facts, dated January 28, 2004).

Given this bare factual history, there is no evidence of any illegal motivation or interference by the Town. The caricature was not intended to be a drawing of Ms. Stockbridge and we have absolutely no knowledge of who placed the initials CEES on the document, or for what purpose. It was never posted for general viewing by union members or the public and when the Board of

Selectmen became aware of it, it was taken down. Under the circumstances, there is no basis for finding a violation of RSA 273-A:5 I (a) or any other subparagraph of this section. Accordingly, we dismiss this paragraph of the Union's complaint.

In Paragraphs 20, 21, and 22 of its complaint, the Union alleges that:

The Town has unilaterally extended benefits of employment to Ms. Lynn Willwerth, a friend of Chairman Karen Knight, without extending the same benefits of employment to other employees in the same classification or in a similar situation unless as a coincidence of circumstances or as an after-the-fact means of justifying its actions and / or defending itself against a charge of favoritism and / or discrimination by the Association.

Specifically, on February 7th, at the direction of the Board of Selectmen, the Town added Clerk / Secretary Lynn Willwerth to the call-out list for the Highway Department and assigned her to performance of snow plowing during a winter storm... this, in spite of the fact that:

a) the call-out lists are a condition of employment that is subject to the collective bargaining process;
b) the call-out lists are a subject upon which previous negotiations have occurred and upon which previous agreements have been reached between the parties;
c) the Association had objected to the unilateral inclusion of any employee in the clerk / secretary job classification on the call-out lists outside of the collective bargaining process, and had invited the Town to submit such a proposal within the structure of the collective bargaining process;
d) the department head and Interim Town Manger had previously refused to include the clerk / secretary position on the call-out lists;
e) the department head and Interim Town Manager had previously denied Ms. Willwerth's grievance requesting inclusion on the call lists;

Nonetheless, the Board of Selectmen saw fit to direct that Ms. Willwerth be added to the call-out lists and assigned work plowing snow on the aforementioned date.

No other employee in the Clerk / Secretary classification was included on the call-out lists. Employees in the Clerk / Secretary classification who have more seniority than Ms. Willwerth and who are members of the Association were bypassed when the offer to plow snow was extended to Ms. Willwerth on the date in question.

Subsequently, in response to the Association's objections to the facts as set forth in allegation #18, above, the Town distributed a questionnaire to employees in the Clerk / Secretary job classification inquiring as to the employee's interest in being included on the call-out lists... advising employees that failure to complete / submit the form would preclude them from consideration for the overtime call-out assignments... thus, circumventing the negotiation process, bypassing the certified Union Representative, and

dealing directly with employees on a matter of collective bargaining in violation of RSA 273-A.

The facts alleged in this portion of the Union's complaint generally concern the use of the Town's overtime "call out" list and the addition to said list of Ms. Lynn Willwerth, a clerk/secretary and member of the bargaining unit represented by the Union. These matters were previously reviewed and considered by the PELRB (see Case No. M-0591-38, Decision No. 2003-070), and in a grievance (Union Exhibit No. 9) and eventual settlement reached between the parties (Union Exhibit No. 5). It is well settled in New Hampshire that "[r]es judicata, or claim preclusion, 'bars the relitigation of any issue that was or might have been raised in respect to the subject matter of the prior litigation.' *Appeal of the University System of New Hampshire Board of Trustees*, 147 N.H. 626, 629 (2002). As the issue of Ms. Willwerth and the call out list was litigated in great detail previously before us (see Finding of Fact, No. 6, above), we decline to consider it again here and therefore grant the Town's Motion to Dismiss as to these portions of the Union's Complaint.

In Paragraph 25 of its complaint, the Union alleges that:

[I]n May, 2002, the Town paid overtime to Ms. Lynn Willwerth in a manner inconsistent with past practice, and in a manner providing a benefit to her that had previously been denied to other employees.

To wit, Ms. Willwerth was asked to work (three hours) during a vacation leave and was paid overtime compensation for the time worked. In the past, employees who were called in during vacation leave periods had their vacation leave usage reduced to reflect fewer vacation hours used. Employees have historically been denied the opportunity to augment their salary by receiving overtime compensation for the hours worked during a vacation leave.

Then, to compound the situation, the Town refused to respond to repeated requests from the Association – requests made over the period of more than six months – for an explanation of the circumstances that warranted the payment of overtime, for payroll data justifying its payment or demonstrating a past practice, or for a statement that would extend the same consideration to all employees in that circumstance in the future.

The facts alleged in this portion of the Union's complaint were also previously litigated before us (see Finding of Fact, No. 6, above, ¶ 2), and as the Union was not precluded from raising these same allegations in that proceeding, we decline to revisit them again. Accordingly, we grant the Town's Motion to Dismiss as to this portion of the Union's complaint.

In Paragraph 26 of its complaint, the Union alleges that:

[D]uring the last two years, the Town has extended the financial benefit of a clothing allowance to Ms. Lynn Willwerth and two other employees in the Clerk / Secretary job classification...withholding the benefit of a clothing allowance from several other employees in the same classification.

Chairman Karen Knight justified the extension of this benefit on the basis of the requirement for these employees to do field work...in spite of the opposition of the Association to the unilateral extension of benefits in a limited and discriminatory manner; in spite of testimony attesting to the limited call for such work among these employees; in spite of proposals that these three employees could / should be provided jumpsuits to use on the infrequent occasions that they might perform field work; in spite of the fact that the Town was extending the same annual clothing benefit to the three clerical employees as they were extending to the labor employees who worked in the field forty-plus hours each and every week; and in spite of the fact that the Town had historically argued that the benefit was intended only for use in purchasing safety equipment, that it had begrudgingly acquiesced to use of the benefit as a clothing allowance, and that the entire history of the issue in collective bargaining argued against a clerk / secretary using town funds to buy personal clothing items (such as skirts, blouses etc) as the funds have been recently used by the employee(s) in question.

The facts alleged in this portion of the Union's complaint were previously raised in an improper practice complaint, which itself was later resolved by the parties. As referenced above, we have taken judicial notice of Case No. M-0591-32, wherein we issued Decision No. 2001-115 (November 21, 2001) following the parties' settlement of same. (Finding of Fact No. 13, above). We see no justifiable basis for re-opening this issue in light of the record before us. This issue was apparently settled in an amicable fashion long ago and is now moot. As a practical matter, if we were to consider such settlements as evidence against a party in subsequent litigation, it would only serve to discourage the similar resolution of disputes in the future. Accordingly, we grant the Town's Motion to Dismiss as to this portion of the Union's complaint.

In Paragraph 27 of its complaint, the Union alleges that:

...[T]he Town has permitted Ms. Lynn Willwerth unfettered access to meetings that do not affect her (individually) or employees within her job classification. During the last several months, the Town has become insistent upon allowing Ms. Willwerth to attend union-related meetings for the purpose of "taking notes" and / or "bearing witness"; this, in spite of the fact that there is a designated confidential employee to whom these responsibilities have been designated – the Town Manager's secretary (which position was kept out of the Association at the request of the Town for the purpose of taking notes and bearing witness). Ms. Willwerth has not taken notes at such meetings and the Town has failed to produce the notes that she reportedly kept at such meetings in spite of numerous requests from the Union for production of said notes. The Town has ordered union employees into meetings that Ms. Willwerth has attended in spite of specific objections from union employees, and the Town has threatened reprisal (up to termination) for failure to abide by such directive.

Here, although the Union alleges prohibited conduct by the Town over an extended period of time, the evidence that it presents in support thereof is inconsistent with its' assertions. Indeed, the sole evidence offered by the Union are paragraphs 6, 9, 12, and 14 as set forth in the findings of fact in PELRB Decision No. 2003-070. (See Finding of Fact No. 6, above). These

previous findings of the Board describe the circumstances of one meeting held on July 9, 2002 at which Ms. Willwerth was present and served as a note taker. Not only did the Union file the instant complaint well beyond six (6) months from the date of the event, thus violating the statute of limitations set forth in RSA 273-A:6, VII, but also these same facts have previously been litigated before us. Even if we were to consider these facts as evidence in support of the Union's claim of continuing violations on the part of the Town, the asking of Ms. Willwerth, a clerk / secretary, to take notes at the July 2002 meeting concerning call back procedures does not, in and of itself, rise to the level of a violation of RSA 273-A:5 I. Accordingly, we dismiss this paragraph of the Union's complaint.

In Paragraph 29 of its complaint, the Union alleges that:

...[S]hortly after the ascension of Ms. Karen Knight into the role of Chairman of the Board of Selectmen, the Town rendered the grievance and arbitration process negotiated into the Collective Bargaining Agreement unworkable – in violation of RSA 273-A – by refusing to meet with the employees during the work day to hear grievances (as had been the historical practice during the preceding seventeen years).

In failing to meet with the employees and their Association representatives during the day, the Town has allowed a backlog of more than thirty grievances to accumulate – some having been filed in excess of one year ago. Furthermore, when the Association attempted to have the matter adjudicated through the arbitration process (as provided for within the CBA) the Town moved in opposition to said initiative... providing the specious rationalization that the scheduling or grievance hearings was not a matter for collective bargaining – this in spite of the fact that the grievance process is a prominent part of the contract between the parties. The effect of these actions has been the cessation of the grievance process, the retardation of labor-management relations in the Town, and a growing sense of frustration and futility among bargaining unit members who believe the Town is punishing them for their affiliation and union activism.

The instant allegations raised by the Union were already the subject of an improper practice charge filed by the Union and decided upon by the PELRB in Case No. M-0591-36 (See Finding of Fact No. 8, above). Indeed, the only evidence offered by the Union in this regard are the Board's findings of facts and discussion as set forth in PELRB Decision No. 2002-105. As this matter has already been litigated, there is no need to revisit it here. In applying the legal doctrine of res judicata, we grant the Town's Motion to Dismiss relative to this portion of the Union's complaint.

In Paragraphs 34 and 35 of its complaint, the Union alleges that:

The Town has refused to pay overtime for travel to / from mandatory training in spite of the fact that the Town has historically paid for time portal-to-portal... the intended effect of such decision in conjunction with the present un-workability of the grievance process is to harm the Association by making it appear ineffectual and unable to effect change in the Selectmen's behavior and attitudes;

-and-

In December, 2002, the Town unilaterally implemented payment of a stipend for weekend standby duty that will benefit only five employees out of approximately fifteen employees in the affected job classifications in the bargaining unit. The Town did so in spite of the objections of the Association, and in spite of the fact that the standby issue is an item contained within the CBA, and in spite of the fact that changes to any condition of employment must be submitted for negotiation within the collective bargaining process... the intended effect of such decision in conjunction with the present un-workability of the grievance process is to harm the Association by making it appear ineffectual and unable to effect change in Selectmen's behavior and attitudes;

The Union requests that we find that the Town has violated provisions of RSA 273-A:5 I by virtue of its actions as alleged above. As supporting evidence, the Union points to contract grievances that it filed and subsequent settlements that it reached on both matters with the Town. (Findings of Fact Nos. 9 and 10, above). Although a party's violation of a collective bargaining agreement does constitute an unfair labor practice under RSA 273-A:5 I (h), here, regardless of their relative merit, the grievances were resolved by the parties. Once again, as a practical matter, if we were to consider such settlements as evidence against a party in subsequent litigation, it would only serve to discourage the similar resolution of disputes in the future. In the interests of long-term harmonious relations between labor and management, the parties' self-governance over grievances is an ideal to be promoted. An "after the fact" ruling by the PELRB, either dismissing or sustaining the charges, would be inconsistent with this principle. Accordingly, we grant the Town's Motion to Dismiss as to this portion of the Union's complaint.

In Paragraph 36 of its complaint, the Union alleges that:

The Town unilaterally imposed a monetary cap on the purchase of employee safety equipment (boots) where the clothing allowance is a negotiated item and no such cap has been negotiated into the Collective Bargaining Agreement... the intended effect of such decision in conjunction with the present un-workability of the grievance process is to harm the Association by making it appear ineffectual and unable to effect change in the Selectmen's behavior and attitudes;

As proof of the instant allegation, the Union asks the Board to take judicial notice of an arbitration award issued on March 6, 1999 in PELRB Case No. M-0591-14. Pursuant to Pub. 203.02 (g), we take judicial notice of same and, having done so, dismiss this portion of the Union's complaint. As is evident from the record, this matter has long been resolved between the parties and is moot. Indeed, the arbitrator's award was issued four (4) years prior to the filing of the instant charge and there has been no claim that the Town has otherwise failed to comply with the award. We see no justifiable basis for effectively reopening this dispute at this time and will not consider it in the context of the ULP before us.

In Paragraph 37 of its complaint, the Union alleges that:

> *The Town has inhibited the Association in the performance of its responsibilities to ensure proper oversight and enforcement of the Collective Bargaining Agreement by failing to respond, or insufficiently responding to, or stonewalling in response to inquires concerning the Town's overtime and leave request policies, copies of payroll records and leave slips, copies of legal invoices (redacted or otherwise), and copies of "minutes" allegedly taken by Ms. Willwerth at various union-related meetings.*

The evidence offered by the Union to prove this allegation consists of the parties' stipulation, submitted to the PELRB on January 28, 2004, that:

> By way of letters dated August 22nd, September 3rd, and September 18th, 2002, and numerous subsequent conversations, the Union requested from the Town and through its attorney copies of all invoices for all contracted legal services by the Town during calendar year 2002. Counsel for the Town responded to such request indicating that the requested documents consisted of detailing billing records and contained information protected by the attorney-client privilege; however, he subsequently suggested that the Town could provide redacted copies of such invoices provided that the redacted versions did not compromise attorney/client privilege. The Union agreed to such redaction; however, the Town failed to provide the Union with the requested invoices.

(See Finding of Fact No. 5, above). The Union also references a portion of PELRB Decision No. 2003-070 in Case No. M-0591-38 in support of its claim, specifically paragraph 4 on page 9. We note that there is no such paragraph on page 9 as cited by the Union, but paragraph 4 on page 11 does include a discussion of certain facts relating to a "letter of inquiry" made by the Union regarding an issue of call back pay.

As throughout the instant matter, the Union bears the burden of proof to establish by a preponderance of the evidence that the Town's actions amount to an improper practice. Here, it states that the Town has "inhibited the Association in the performance of its responsibilities to ensure proper oversight and enforcement of the Collective Bargaining Agreement." The evidence that it submits in support thereof is the above stipulation pertaining to Town's billing records for legal services. Although a public employer is generally obligated, under the duty to bargain in good faith, to provide information upon request to a union that is reasonable and necessary for it to fulfill its responsibilities as the exclusive representative, here the Union has made no such showing as to how these records relate to its duties in this regard. Thus, the fact that the Town has failed to provide the Union with the requested invoices is of no legal effect. The remaining evidence is a cited portion of PELRB Decision No. 2003-070. This also provides an insufficient basis for us to sustain a finding an improper labor practice, as there is no indication that the Town did not respond to the "letter of inquiry."

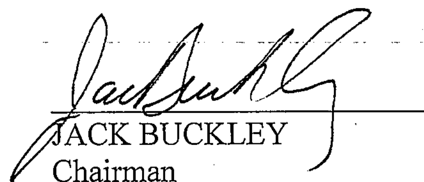
Having considered each of the multiple parts of the ULP complaint separately and having found them to either be procedurally defective or otherwise not rising to the level of being a violation of RSA 273-A:5 I, we, likewise, do not find the totality of the Town's conduct, as alleged, to be, or to have risen to the level of being, an unfair labor practice. The Union seems to

have proceeded in this matter under the presumption that given the sheer volume of disputes and difficulties it has faced with the Town over the past several years, that fact alone rises to the level of actionable bad faith under the statute. In doing so, the Union has neglected to recognize that much of what it alleges has been settled or decided. It serves neither party's interest, nor the public's, to "dredge up old wounds" or to re-litigate matters upon which we have already ruled. Despite an obviously contentious relationship over the years, these parties have nevertheless shown an ability to resolve their disputes through negotiations and the utilization of their grievance procedure. The fact that they have reached such settlements in the relatively recent past (see Union Exhibit Nos. 3, 5 and 14) would indicate that they still possess this capacity. We take this opportunity, as we did in Decision No. 2003-070, to encourage the parties to examine, reflect on and recommit themselves to the "harmonious and cooperative" labor relations environment envisioned by Chapter 490:1 of the Laws of 1975.

We DISMISS all charges of unfair labor practices and deny all requests for relief sought by the Union.

So ordered.

Signed this 20th day of July, 2004.



JACK BUCKLEY
Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.

Distribution:
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