



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Jessica Miehle	*	
	*	
	*	
Complainant	*	
	*	Case No: G-0003-2
	*	
	*	Decision No. 2004-104
Teamsters Local 633 of New Hampshire	*	
	*	
Respondent	*	
	*	

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Jessica Miehle (hereinafter "the Complainant") filed an improper practice charge against Teamsters Local Union 633 of New Hampshire (hereinafter "the Respondent") on June 16, 2004 alleging that the Respondent violated RSA 273-A:5 II (a), (c) (d) and (e) by virtue of certain actions towards her. The Complainant states that during her employment with the North Hampton Police Department ("the Town"), between the dates of March 23, 2001 and January 18, 2004, the Respondent and its steward interfered with her in the exercise of her rights under RSA 273-A, and did in fact attempt to cause the Town to discriminate against her, refuse to negotiate with the Town in good faith on her behalf, and did otherwise violate the collective bargaining agreement between the Respondent and the Town by discriminating against her due to her non-membership in the union.

The Respondent filed its answer denying the Complainant's charge on June 25, 2004. It denies that it has in any way discriminated against the Complainant, or otherwise violated the law, relative to its treatment of, or conduct towards, the Complainant. At the outset, it specifically denies that it ever caused the employer to discriminate against her, noting that the Complainant has not described any such specifics in her complaint. The Respondent also states that the Complainant has not raised any allegations of instances that have occurred within the past six (6) months. The Respondent denies that it refused to negotiate in good faith with the employer, and points out that all employees received wage and benefit improvements. It states that these wage and benefit adjustments were ratified by the union membership, for which the Complainant was present. The Respondent denies that it discriminated against the Complainant, or her former position as Administrative Clerk, because of her non-membership status in the union. When the Town created the new position of Administrative Assistant to the Chief of Police, the Respondent states that it did not object to the pay and benefits for said position, nor hinder the Complainant being hired to fill it.

The Respondent requests that the PELRB dismiss the Complainant's charges on lack of merit and lack of substance.

On July 9, 2004, a pre-hearing conference was conducted in the above-entitled matter during which the complainant and representatives of the respondent were present. Based upon the discussions between the hearing officer and the parties at that time, it was determined that the Complainant would provide further information on the specific grounds for her complaint, and the relief she is seeking, in the form of an amended complaint to be filed in accordance with the timetable set forth below.

PARTICIPATING REPRESENTATIVES

For the Complainant: Jessica Miehle, *pro se*

For the Respondent: Thomas D. Noonan, Business Agent

ISSUES FOR DETERMINATION BY THE BOARD

(1) Are portions of the complaint violative of the six-month statute of limitations set forth in RSA 273-A:6 VII or has the Complainant otherwise failed to state a claim upon which relief can be granted?

(2) Has the Respondent discriminated against the complainant, in violation of RSA 273-A:5 II (a) (c) (d) and/or (e), as a result of her non-membership in the union?

(3) If so, what shall be the remedy?

WITNESSES

For the Complainant:

1. Brian Page, Chief of Police
2. James Giguere, Police Officer
3. Gary Homiak, Police Officer

For the Town:

1. Joshua Stokel, Police Officer, Union Steward

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. Union Certification & Order to Negotiate

2. Parties' collective bargaining agreement, 2001 - 2004
3. Parties' collective bargaining agreement, 2004 - 2009
4. 12/24/03 Job Posting
5. Administrative Clerk - Job Description
6. Administrative Assistant - Job Description

For the Complainant:

1. July 7, 2003 E-mail
2. July 17, 2003 E-mail
3. July 18, 2003 Contract Proposal
4. Research information on Administrative Clerk Position
5. July 2003 phone records
6. Union membership dues invoices
7. August 12, 2003 Town of North Hampton's Counter Proposal
8. August 14, 2003 Signed Union Contract (2004 - 2009)
9. Staff meeting minutes from several meetings
10. January 2004 Teamsters Local Union 633 Newsletter
11. Contract Amendments
12. January 20, 2004 Special Order
13. January 26, 2004 Tentative agreement
14. February 16, 2004 Pay rate list
15. Teamsters Local Union 633 Constitution & Bylaws
16. International Brotherhood of Teamsters Constitution & Bylaws

For the Respondent:

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 (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. The complainant shall file an original and five (5) copies of an amended complaint with the PELRB on or before **July 16, 2004** in which she shall, pursuant to Board regulations, (a) describe in a clear and concise statement the facts and circumstances upon which she alleges the respondent violated RSA 273-A:5 II, including the date, time and place

of the occurrence, the names of all persons involved in or witnessing the occurrence, characterizing each particular act in terms of the specific provisions of RSA 273-A:5 II or RSA 273-A:6 alleged to have been violated, and (b) state the remedies or specific relief she is seeking under RSA 273-A. A copy shall be forwarded to the representative for the respondent. Failure to comply with the foregoing may be grounds for dismissal of the instant unfair labor practice charge.

2. The complainant shall send a copy of all complainant's exhibits, as listed above, to the respondent's representative, postmarked no later than **July 16, 2004**.

3. The parties' representatives shall meet, or otherwise confer, on or before **September 7, 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.

4. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative, 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, an evidentiary hearing between the parties will be held on

September 21, 2004 @ 9:30 AM

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

So ordered.

Signed this 12th day of July, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Jessica Miehle
Thomas Noonan, Business Agent