



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 3657, Merrimack Police
& Fire Officers

Complainant

v.

Town of Merrimack

Respondent

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Case No: G-0002-1

Decision No. 2004-108

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 3657, Merrimack Police & Fire Officers (hereinafter "the Union") filed an improper practice charge on June 10, 2004 alleging that the Town of Merrimack (hereinafter "the Town") committed an unfair labor practice, in violation of RSA 273-A:5 I (a), (b), (c), (e), (g), (h) & (i), when it rejected a tentative contract settlement reached between the parties. More specifically, the Union states that on or about June 18, 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 20, 2003 reached a tentative agreement. However, on December 22, 2003, the Union alleges that it was notified by the Town that that the tentative agreement had been rejected by the Board of Selectmen. As a result of such conduct, the Union alleges that the Town has knowingly and willfully committed an unfair labor practice by bargaining in bad faith, and specifically by unanimously rejecting its own proposal which had been tentatively agreed to at the bargaining table. As remedies, the Union requests that the PELRB, among other things, sustain the instant complaint, order the Town to bargain in good faith, and order the Town to take all necessary steps to ensure that the parties' tentative agreement is presented at the next town meeting.

The Town filed its answer denying the Union's charge on June 25, 2004. Although the Town does not generally 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. It states that the fact that a tentative agreement negotiated between the parties' respective bargaining teams is not ratified by either the Union or the Board of Selectmen is simply no evidence that the negotiators did not negotiate in good faith. Accordingly, the Town requests that the instant improper practice charge be dismissed.

A pre-hearing conference was conducted at PELRB offices on July 14, 2004, during which both parties were represented by counsel. During the course of the pre-hearing conference, the Union withdrew that portion of its complaint that referred to an alleged violation of RSA 273-A:5 I (c). The Town also raised an issue as to the relief being sought by the Union, stating that it was beyond the jurisdiction and authority of the PELRB to grant.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine M. McClure, Esquire

For the Town: Abigail J. Sykas, Esquire

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), (b), (e), (g), (h) and/or (i) 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. Steven Lyons, AFSCME Staff Representative
2. Brian Boulay, Member, Union Bargaining Team
3. Richard Desmond, Member, Union Bargaining Team
4. Shawn Allison, Member, Union Bargaining Team
5. Richard Tierson, Member, Union Bargaining Team

For the Town:

1. William Wardwell, Town Negotiator
2. Sharon Beland, Human Resources Assistant, Town of Merrimack
3. Dean Shankle, Former Town Manager
4. Richard Hinch, Chairman, Board of Selectmen

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. PELRB Certification, dated March 5, 2004
2. Collective Bargaining Agreement, 2001-2004
3. March 26, 2003 Letter from S. Lyons to D. Shankle
4. Negotiation ground rules, dated June 18, 2003
5. Proposals and counter-proposals
6. Town proposals, counter-proposals, dated August 20, 2003
7. Parties Tentative Agreement, dated 11/20/03
8. Parties "Change Summary," prepared 11/24/03
9. E-mail from A. Stone to S. Lyons, dated 12/22/03
10. Minutes of 12/18/03 Board of Selectmen's Meeting.
11. February 17, 2004 Letter from S. Lyons to W. Wardwell

For the Union:

1. None other than those marked as "Joint."

For the Town:

1. Town Charter
2. Minutes and Tapes of Selectmen's public and non-public meetings
3. Town's negotiation notes
4. Correspondence between negotiating team and Board of Selectmen

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 parties' representatives shall meet, or otherwise confer, on or before **July 23, 2004**, in order to exchange all pertinent documents and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need of witness testimony. In the event that agreement is reached to submit the case by written submission, the parties shall file a joint statement indicating such agreement and including a proposed schedule for filings.

2. Upon discussion with the PELRB Hearing Officer, the parties' representatives stipulated to the facts as alleged in paragraphs 1 through 13, excluding paragraph 9, as set forth in the Union's complaint. The parties' representatives shall meet, or otherwise confer, on or before **July 23, 2004** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate, including the aforementioned facts that were agreed to during the pre-hearing conference, and file that document with the PELRB at the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.

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

October 21, 2004 @ 9:30 AM*
(*please note: new date and time)

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

So ordered.
Signed this 20th day of July, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Katherine M. McClure, Esq.
Mark T. Broth, Esq.