



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 2986/Merrimack Public Works  
Employees

Complainant

v.

Town of Merrimack

Respondent

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Case No: A-0459-10

Decision No. 2004-109

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Council 93, Local 2986, Merrimack Public Works Employees (hereinafter "the Union") filed an improper practice charge on May 24, 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 during the course of their current three-year contract with the Town (2003-2006), it sent a letter to the Town on July 23, 2003 indicating its intent and desire to negotiate the wage re-opener provision with the Town. On October 7, 2003 an initial bargaining session was held. Thereafter, as indicated by the Union, the parties reached a tentative agreement during a bargaining session held on October 23, 2003. The tentative agreement included a wage increase for the year 2006-07, which was not originally part of the re-opener. The Union alleges that on November 25, 2003, the Town's Board of Selectmen rejected the tentative agreement by a unanimous vote. At such meeting, the Union quotes the Board's Chairman as stating that "the tentative agreement does not make any changes in the current health and benefit plan..." It contends that the Town's Board of Selectmen has knowingly and willfully committed an unfair labor practice by bargaining in bad faith, and specifically by unanimously rejecting it's own proposal which had been tentatively agreed to with the Union. It argues further that the Town's Board of Selectmen has knowingly and willfully committed an unfair labor practice by mandating that subjects other than wages be negotiated. As remedies, the Union requests that the PELRB, among other things, sustain the instant complaint, order the Town to bargain in good faith, order the Town to honor its own

proposal made at the October 23, 2003 meeting, 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 4, 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 Town's bargaining representatives notified the Union bargaining representative that any tentative agreement reached at the bargaining table was subject to ratification by the Board of Selectmen. It further states, among other things, that the Town's Board of Selectmen had the right to review and approve or disapprove any tentative agreement reached at the bargaining table, particularly any tentative agreement that they had not previously authorized. It notes that it was under no obligation to enter into negotiations in September 2003 regarding a successor to the contract that was not scheduled to expire until July 2, 2006. 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, asserting that the PELRB does not have the authority to order the Town to present the instant tentative agreement to town meeting.

#### 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. David Evans, Local President

For the Town:

1. William Wardwell, Town Negotiator
2. Sharon Beland, Human Resources Assistant, Town of Merrimack
3. 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 4, 2003
2. Collective Bargaining Agreement, 2003-2006
3. July 23, 2003 Letter from S. Lyons to D. Shankle
4. Town counter-proposal, dated September 22, 2003
5. Parties Tentative Agreement, dated 10/23/03
6. E-mail from S. Lyons to A. Stone, dated 11/13/03
7. E-mail from S. Lyons to S. Beland, dated 11/13/03
8. December 8, 2003 letter from S. Lyons to W. Wardwell.
9. Minutes of Special Session, Merrimack Board of Selectmen's meeting, 11/25/03
10. Videotape of Merrimack Board of Selectmen's meeting, 11/25/03.
11. E-mail from A. Stone to S. Lyons, dated 12/2/03.

For the Union:

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

For the Town:

1. Town Charter
2. Minutes of Selectmen's public and non-public meetings
3. Town's negotiation notes

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 for formal 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 8 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

**September 9, 2004 @ 9:30 AM**

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

So ordered.

Signed this 20<sup>th</sup> day of July, 2004.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Katherine M. McClure, Esq.

Mark T. Broth, Esq.