



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Exeter Professional Firefighters Association,
Local 3491, IAFF, AFL-CIO, CLC

Complainant

v.

Town of Exeter

Respondent

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Case No: F-0115-5

Decision No. 2004-123

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Exeter Professional Firefighters Association, Local 3491, IAFF (hereinafter "the Association") filed an unfair labor practice complaint on June 22, 2004 alleging that the Town of Exeter (hereinafter "the Town") committed an unfair labor practice by breaching the parties' collective bargaining agreement ("CBA"). More specifically, the Association claims that the Town violated RSA 273-A:5 I (h) by reprimanding and suspending for two (2) days Fire Lieutenant Ward Byrne on October 10, 2003. As described in the Association's complaint, the Town based such punishment upon its determination that Lieutenant Ward had violated a lawful court order that prohibited him from being at the place of employment of another person and that, in violation of various provisions of the Exeter Fire Department's Rules and Regulations, as well as the Town's Personnel Plan, he failed to inform his superiors of such prohibition and provide them with copies of the pertinent court documents after being requested to do so. Thereafter, the Association filed a grievance challenging the discipline imposed and the matter proceeded to arbitration. As noted by the Association, the decision of an arbitrator shall be "advisory only" in accordance with the terms of the parties' contractual grievance procedure.

An arbitration hearing was conducted on April 12, 2004. The Association states that in his award dated April 24, 2004, the arbitrator found that the Town did not have just cause to suspend Lieutenant Byrne, nor issue its disciplinary letter against him. The arbitrator recommended that the disciplinary letter be purged from the Lt. Byrne's file and that he be made whole for all lost wages and benefits. The Association states that on or about May 11, 2004, the Town's Board of Selectmen voted to reject the Award of the arbitrator. Accordingly, the

Association avers that the Town has violated RSA 273-A:5 I (h) by virtue of its discipline of Lieutenant Byrne being contrary to the just cause requirement set forth in Article 17 of the parties' CBA. As remedies, the Association requests that the PELRB sustain the instant complaint, order the Town to make Lieutenant Byrne whole for any and all wages and benefits lost, as well as rescind the letter of discipline, and grant such other and further relief as may be deemed just.

The Town filed its answer denying the Association's charge on July 1, 2004. Although the Town essentially admits to the chronology of events as described by the Association in its charge, it denies any violation of the parties' contract or the law. The Town asserts that it had just cause to discipline Lieutenant Byrne in the manner that it did. It contends that Lieutenant Byrne violated specific terms of the court stipulation, as evidenced by his own actions on the day he visited the individual's employment site, and, in conjunction therewith, failed to follow a direct and legal order given to him by his superior officer, namely Captain Christopher Soave, to provide a copy of such stipulation to the department. Accordingly, the Town requests that the PELRB find that the Town of Exeter has not committed an unfair labor practice and that it order such other relief as it deems just.

A pre-hearing conference was conducted at PELRB offices on August 11, 2004 at which both parties were represented by counsel.

PARTICIPATING REPRESENTATIVES

For the Association: John S. Krupski, Esq.

For the Town: Lynn D. Morse, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether or not the Town committed an improper labor practice, within the meaning of RSA 273-A:5 I (h), in its discipline of Lt. Ward Byrne on or about October 10, 2003.
- (2) If so, what shall be the remedy?

WITNESSES

For the Association:

1. Lt. N. Ward Byrne
2. Pamela J. Khoury, Esq.
3. Firefighter Lee Dawson, Association President

For the Town:

1. Brian D. Comeau, Fire Chief

2. Christopher Soave, Fire Captain
3. George Olson, Town Manager

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. Collective bargaining agreement between EPFA, Local 3491 & Town of Exeter 2003-2005
2. Letter of Fire Chief to Lt. Byrne dated October 10, 2003
3. Letter of Lee Dawson to George Olson dated November 13, 2003
4. Letter of George Olson to Lee Dawson dated December 5, 2003
5. Letter of Attorney Khoury to Chief Comeau dated October 17, 2003
6. Partial Stipulation in the Matter of Susan Jones and Norman W. Byrne, dated March 9, 2004.
7. Grievance Letter, dated October 29, 2003.
8. Denial of Grievance, dated November 7, 2003.
9. Association's Appeal to Arbitration, dated December 22, 2003.
10. Arbitrator's Award, dated 4/24/04.
11. Town's rejection of Arbitrator's Award, dated May 11, 2004.
12. Notice of Decision - Temporary Stipulation, dated September 23, 2002.
13. Town of Exeter Personnel Plan.
14. Fire Department Rules and Regulations.
15. Letter of Lee Dawson to Fire Chief Comeau, dated October 17, 2003.

For the Association:

None other than those marked as "Joint."

For the Town:

1. Report of Captain Soave, dated October 8, 2003.

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 being set aside for this hearing is one-half 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

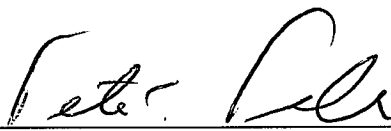
1. The parties shall engage in good faith, in-person, settlement discussions on or before **September 14, 2004** and shall jointly report to the PELRB Hearing Officer the results of such efforts by said date.
2. In the event that the parties are unsuccessful in their settlement efforts, the parties' representatives shall meet, or otherwise confer, on or before **September 21, 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, a long with any corresponding exhibits, 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.
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:

October 5, 2004 @ 9:30 AM

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

So ordered.

Signed this 12th day of August, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
John S. Krupski, Esq.
Lynn D. Morse, Esq.