



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Professional Firefighters of Hudson
Local 3154, IAFF

Complainant

v.

Town of Hudson

Respondent

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Case No: F-0132-13

Decision No. 2004-139

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Hudson Professional Firefighters, Local 3154 IAFF (hereinafter "the Union") filed an unfair labor practice complaint on July 14, 2004 alleging that the Town of Hudson (hereinafter "the Town") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c) and (i) when it discontinued a practice of allowing unit members to have a union logo or insignia placed on their uniforms. More specifically, the Union states that since 1996 the parties had agreed that unit members, at their own option, could have the designation of Local 3154 placed on their duty uniform. The Union alleges that on February 10, 2004, the Town's Board of Selectmen voted that "the logo, insignia, or other reference to IAFF Local 3154 (Firefighters Union) will no longer be included in uniform items." It maintains that the Town's conduct in this regard was in direct violation of the ongoing agreement between the parties' regarding the placement of union insignias upon the uniform. Moreover, according to the Union, this action occurred while the parties were at contract impasse. The Union claims that the Town's action is based upon a discriminatory animus and in retaliation for the Union's refusal to accept proposals proffered by the Town. The Union also claims that the actions of the Town in regards to the speech of unit members was not content neutral and was directed exclusively at the removal of the logo of Local 3154. It is the Union's belief and understanding that the Town allows other associations and organizations, such as the Fire Chief's Association and NH Municipal Association, to be displayed on Town property. As remedies, the Union requests, that the PELRB (1) determine that the Town has committed an improper labor practice, (2) find that the Town has discriminated against members of Local 3154, (3) order the Town to cease and desist from any further illegal activities and (4) grant such other relief as is just and equitable.

The Town filed its answer denying the Union's charge on July 27, 2004. While the Town generally admits to the chronology of events as described in the Union's complaint, and that since approximately 1996 unit members have been permitted to incorporate "Local 3154" on certain clothing items, it denies that it has committed any improper labor practice. By way of further answer, it states that the parties' collective bargaining agreement provides for arbitration of disputes, that the Union has already submitted the instant dispute to binding arbitration, that said arbitration is scheduled to be heard on August 30, 2004, and that the PELRB should properly defer any action with regard to this matter until after the issuance of the arbitrator's decision. Otherwise, the Town requests that the PELRB (1) deny the relief sought in the Union's unfair labor practice charge, (2) award the Town its costs and attorney's fees incurred in this matter, and (3) grant such other relief as justice may require.

Counsel for the parties appeared before the undersigned Hearing Officer at a pre-hearing conference conducted on August 25, 2004 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: John S. Krupski, Esq.

For the Town: Abigail J. Sykas, Esq. (for Mark T. Broth, Esq.)

ISSUE PRESENTED FOR BOARD REVIEW

Whether the Town failed to bargain in good faith, discriminated against members of Local 3154 due to an anti-union animus, or otherwise committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c) and/or (i) by its actions relative to the firefighter uniforms.

WITNESSES

For the Union:

1. Firefighter Todd Hansen, Former Association President
2. Fire Chief Shawn Murray
3. Former Fire Chief Frank Carpentino
4. Firefighter James Pauquette, Member, Assoc. Executive Board
5. Member(s) of the Town's Budget Committee
6. Firefighter Steve Benton, Association President
7. Current/Past members of Board of Selectmen

For the Town:

1. Fire Chief Shawn Murray
2. Former Fire Chief Frank Carpentino
3. Selectman Terry Stewart
4. Steve Malazia, Town Administrator
5. Selectman Ken Massey
6. Selectmen William Cole

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. Minutes of Selectmen's Meetings
2. Parties' Collective Bargaining Agreement

For the Union:

1. Uniform Request forms
2. Relevant pleadings submitted at arbitration
3. Pictures of uniform(s)/insignia(s)
4. Letters/correspondence from Huntress Uniform Service
5. Petition/pleadings in PELRB Case F-0132-10

For the Town:

1. Correspondence between Fire Dept. and Union
2. Fire Dept. Policy and procedures manual
3. Town Policy regarding modification of Fire Dept. policies.

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 (1) 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

After discussion between the parties' representatives and with the Hearing Officer, the parties have agreed and executed a stipulation that is hereby incorporated in this order as Paragraphs #1 and #2, below:

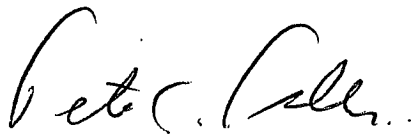
1. The parties agree that PELRB proceedings in Case No. F-0132-13 shall be held in abeyance pending the issuance of the arbitrator's award in PELRB Case No. F-0132-12.

In such proceeding, the parties shall request the arbitrator to forward his award to the PELRB at the same time it is issued to the parties. The Union, as Complainant in this pending ULP, shall notify the PELRB of the ongoing status of the arbitration case every sixty (60) days, or until the issuance of the arbitrator's award.

2. Within 30 days of receipt of the arbitrator's award, either party shall advise the PELRB, in writing, whether it requests that Case No. F-0132-13 be brought forward for hearing.
3. The parties are further directed and notified that in the event that neither party files a request for hearing with the PELRB within thirty (30) days of its receipt of the arbitrator's award, this matter shall be administratively dismissed and removed from the PELRB's docket of open cases.
4. In the event that it becomes necessary to schedule a hearing before the PELRB, the party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing counsel and to the PELRB at least five (5) days prior to the scheduled hearing. 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' representatives shall meet, or otherwise confer, no later than twenty (20) ~~days prior to a scheduled hearing date 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.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than twenty (20) calendar days prior to the scheduled hearing date.

So ordered.

Signed this 26th day of August, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
John S. Krupski, Esq.
Mark T. Broth, Esq.