



STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Town of Hampton	*	
	*	
Complainant	*	
	*	
v.	*	Case No: F-0118-13
	*	
Hampton Firefighters, Local 2664. IAFF	*	Decision No. 2005-109
IAFF, AFL-CIO, CLC	*	
Respondent	*	
	*	

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PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Town of Hampton (hereinafter "the Town") filed an unfair labor practice complaint on June 23, 2005 alleging that the Hampton Firefighters, Local 2664. IAFF, AFL-CIO, CLC (hereinafter "the Association") violated RSA 273-A:5 II (f) by breaching the parties' collective bargaining agreement ("CBA"). More specifically, the Town states that the Association filed a grievance relating to fire station coverage in a letter dated April 20, 2005. The Town contends that the subject of fire station coverage falls within the scope of its' management rights as expressed within Article 4 of the parties' CBA, and hence it is not subject to the CBA's grievance procedure. The Town points to express language in Article 4, Section 2 establishing that the provisions of Article 4 are not subject to the terms of the grievance procedure set forth in Article 30. It therefore asserts that by instituting the grievance and pursuing arbitration, the Association has violated Article 4 of the CBA and thereby committed an unfair labor practice in violation of RSA 273-A:5 II (f). As remedies, the Town requests, among other things, that the PELRB find that the issue at hand is not arbitrable and order the Association to withdraw its' demand for arbitration.

The Association filed its answer denying the Town's charge on July 8, 2005. While the Association generally admits to the chronology of events as described in the Town's complaint, it denies any violation of the law. By way of further answer, the Association states that it did file a grievance alleging ongoing violations of "the Work Agreement, specifically Articles 40 (Safety and Health); 2 (Recognition); 9 (Residency); 15 (Overtime) and all other relevant sections of the Work Agreement." It further relates that since the parties' arbitration clause empowers the arbitrator to determine all questions of arbitrability (ref. Article 30, Section 5, C), the Town's claim that the grievance is not arbitrable is itself an appropriate question to be submitted to an

arbitrator. Accordingly, the Association requests, inter alia, that the PELRB dismiss the Town's complaint.

On August 1, 2005, the Town filed a "Motion to Order the Arbitration Demanded by the Hampton Firefighters, Local 2664, IAFF, to be held in Abeyance" seeking a Board order staying an arbitration hearing scheduled for September 26, 2005. On August 15, 2005, the Association filed its objections thereto and Motion to Dismiss. The Association states, among other things, that based upon relevant case law, including *Appeal of Westmoreland*, 132 N.H. 103 (1989), the Town's complaint should be dismissed and the grievance should proceed in arbitration.

A pre-hearing conference was conducted by the undersigned hearing officer at PELRB offices on August 19, 2005.

#### PARTICIPATING REPRESENTATIVES

For the Association: John S. Krupski, Esq.

For the Town: Elizabeth A. Bailey, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

- (1) Does the Board have jurisdiction to hear the dispute or should it be submitted to an arbitrator under the terms of the parties' grievance procedure?
- (2) If Board jurisdiction is appropriate, did the Association commit an improper labor practice, within the meaning of RSA 273-A:5 II (f), by instituting the fire station coverage grievance and pursuing it to arbitration?
- (3) If so, what shall be the remedy?

#### WITNESSES

For the Town:

1. James Barrington
2. Chief Hank Lipe
3. Michael McMahan

For the Association:

1. Michael McMahan
2. David E. Lange

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, 4/1/2003-3/31/2006.
2. Letter from Michael McMahon to Chief Lipe, dated 4/20/05.
3. Letter from Chief Lipe to Local 2664, dated 4/21/05.
4. Letter from Local 2664 to James Barrington, dated 4/25/05.
5. Letter from James Barrington to Local 2664, dated 5/6/05.
6. Letter from Local 2664 to James Workman, dated 5/12/05.
7. Letter from Board of Selectmen to Local 2664, dated 5/17/05.
8. Letter from Board of Selectmen to Local 2664, dated 6/1/05.
9. Letter from Local 2664 to James Workman, dated 6/2/05.
10. Letter from Local 2664 to American Arbitration Association, dated 6/2/05.
11. Town's Answer to demand for Arbitration.

#### For the Town:

None other than those marked as "Joint."

#### For the Association:

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

No hearing is scheduled at this time.

### DECISION

1. PELRB Case Nos. F-0118-13 and F-0118-14 are hereby consolidated solely as to the issue of jurisdiction.
2. The Town shall file its response to the Association's Motions to Dismiss on or before **August 30, 2005**. The Association shall thereafter file, on or before **September 2,**

2005, any supplemental facts and argument as to jurisdiction. As of that date, the parties' submissions on the issue of jurisdiction shall be deemed closed and a Board decision shall issue based solely upon the file documents and the parties' memoranda, unless it is determined that a hearing is necessary prior to a final determination.

3. In the event the parties are able to resolve the instant matter prior to a decision on jurisdiction, counsel shall notify the Board of such settlement as soon as possible.
4. In the event that the instant matter proceeds to hearing based upon the granting of a party's motion for same, or based upon the Board's own motion, the parties' representatives shall meet, or otherwise confer, on or before 10 days prior to the 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, a long with any corresponding exhibits, with the PELRB at least five (5) days prior to the date of the hearing.
5. 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.

So ordered.

Signed this 24<sup>th</sup> day of August, 2005.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

John S. Krupski, Esq.

Elizabeth A. Bailey, Esq.