



hope that the underlying issue could be resolved during collective bargaining negotiations for a successor contract, it denies that there was ever a subsequent agreement by the Town to proceed to arbitration on the grievance. On the contrary, the Town asserts that it has at all times maintained that the Union's grievance is invalid and non-arbitrable. Since the subject grievance concerns the promotional process to the rank of police lieutenant, a non-bargaining unit position, it is the Town's contention that the grievance does not arise from the parties' collective bargaining agreement ("CBA"). As to the events of August 30, 2005, the Town states that it learned on that date of the Union's intentions to revive the grievance and of its' suggestion that the parties utilize the services of Arbitrator Parker Denaco. The Town further elaborates that Town Manager Fred Welch told the Union representative that he would take the suggestion on using Arbitrator Denaco to the Board of Selectmen for consideration, but that the Union did not wait for a response from the Board and instead unilaterally contacted the arbitrator and requested available dates for hearing. The Town requests that the PELRB dismiss the Union's charges, award costs to the Town and grant the Town such other and further relief as the PELRB deems appropriate.

The Union filed its answer denying the Town's charges on December 7, 2005. The Union disputes the Town's contention that the grievance does not arise out of the parties' CBA in that the promotional article, specifically Article 8, by its own terms applies to "...any position in the department" and, further, that "[a]ll promotions shall be made from among permanent full-time patrolmen..." The Union further asserts that its' grievance satisfies the definition of grievance under Article 7 of the parties' CBA. Finally, the Union submits that both parties signed off on the fact that the case could move forward within the grievance procedure. The Union therefore denies that the matter is inarbitrable and as such maintains that it has not violated RSA 273-A:5, II (f) and (g).

On January 12, 2006 AFSCME Council 93, on behalf of Local 2301, Seabrook Supervisory Employees, filed a Motion to intervene in the pending matters before the PELRB.

A pre-hearing conference was conducted on February 8, 2006 at PELRB offices, Concord, New Hampshire. The Union's representative participated via speakerphone.

#### PARTICIPATING REPRESENTATIVES

For the Union: Jeffrey Padellaro, Business Agent

For the Town: Mark T. Broth, Esq.

#### ISSUES FOR DETERMINATION BY THE BOARD

- (1) Did the Town waive its right to contest the substantive arbitrability of the Union's grievance before the PELRB by otherwise agreeing to present the issue to an arbitrator?
- (2) If not, is the Union's grievance challenging the promotional procedure utilized by the Town to fill a lieutenant (and non-bargaining unit) position substantively arbitrable?

#### WITNESSES

For the Association:

1. Cora Stockbridge, Selectperson

2. Mark Preston, Police Officer, Association President & Bargaining Team Member
3. Karen Knight, Selectperson
4. David Currier, Chief of Police
5. David Buccherri, Police Officer, Assoc. Bargaining Team Member
6. Richard McCann, Selectperson
7. Dan Lawrence, Police Officer, Assoc. Bargaining Team Member

For the Town:

1. Frederick Welch, 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. Parties' CBA – April 1, 2003 – March 31, 2006.
2. Grievance letter dated 12/30/04 from Mark Preston to Fred Welch.
3. Grievance response letter dated 1/26/05 from Chief Currier to Jeff Padellaro.
4. Level 4 Grievance response issued by Town Manager Fred Welch.
5. Abeyance agreement dated April 18, 2005.

For the Union:

1. Board of Selectmen's meeting minutes.
2. Other correspondence between the parties.

For the Town:

1. CBA, ending March 31, 2006, between the Town and Seabrook Supervisory Employees Association, AFSCME Council 93, Local 2301.
2. Town and Union correspondence with American Arbitration Association
3. Union Correspondence with Parker Denaco, Esq.

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.

DECISION

1. PELRB Case Nos. P-0736-12 & P-0736-13 are hereby consolidated.
2. Subject to the provisions of Pub. 201.07 (g) & (h), AFSCME Council 93, Local 2301/Seabrook Supervisory Employees' Motion to Intervene in Case No. P-0736-12 and filed on January 12, 2006 is granted.
3. The parties' representatives shall meet, or otherwise confer, on or before **February 17, 2006** 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 on or before that date.
4. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative, 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 (f).
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an adjudicative hearing between the parties, in accordance with Pub. 203, will be held on:

**February 23, 2006 @ 9:30 a.m.**

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

It is so ordered.

Signed this 8<sup>th</sup> day of February, 2006.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:  
Jeffrey Padellaro, Business Agent  
Mark T. Broth, Esquire