



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire,
SEIU Local 1984

Complainant

v.

Merrimack County Department of Corrections

Respondent

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Case No. S-0327-36

Decision No. 2006-041

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The State Employees Association, SEIU Local 1984 (hereinafter "Union") filed an unfair labor practice complaint on December 23, 2005 alleging that the Merrimack County Department of Corrections (hereinafter "County") committed unfair labor practices when it failed to negotiate in good faith while bargaining for a successor collective bargaining agreement (CBA) and by implementing a reorganization that resulted in certain positions being removed from the bargaining unit, including one held by the Union's chapter president. More specifically, the Union states that since it gave notice of its desire to renegotiate the terms of the existing CBA and subsequently over the course nine bargaining sessions, the County has engaged in conduct that cumulatively reflects an indicia of bad faith, including failure to present itself at the scheduled time for a bargaining session, declining to provide feedback to the Union's proposals, advising the Union that it had a favorable reaction to only three of the Union's proposals and that the CBA needs to be wholly re-written "for a new age," and suggesting that the parties secure the services of a mediator without conducting a single meaningful negotiation session and later petitioning the PELRB for the appointment of a mediator. The Union also alleges that by letter dated November 28, 2005, the County advised the Union of its intent to reorganize maintenance personnel within the County and thereby remove two positions from the bargaining unit. According to the Union, this action had been the subject of an earlier contract proposal of the County and involved a position occupied by the then Union Chapter President, Robert Lozeau.

Based upon the foregoing, the Union asserts that the County has failed to negotiate in good faith and sought to bypass the collective bargaining and/or unit certification processes by reorganizing positions out of the bargaining unit in retaliation for the Union's refusal to submit

to the County's bargaining demands. As a result, the Union claims, that the County has violated RSA 273-A:5 I (a), (b), (e), (g), (h), and (i). The Union requests that the PELRB (1) sustain its complaint, (2) find that the County's declaration of impasse and request for mediation were unlawful and, accordingly, order the County back to the bargaining table unless and until a genuine impasse is reached, (3) find that the subject matter of the removal of maintenance positions from the bargaining unit was submitted by the County to the bargaining process and that the County is therefore prohibited from achieving its bargaining objective through a unilateral reorganization of county operations, and (4) order such other relief as it deems just and proper.

Following the Board's approval of its January 6, 2006 "Assented to Motion to Extend Time for Filing of Answer," the County filed its answer denying the Union's complaint on January 17, 2006. While the County generally admits to the chronology of events as alleged in the Union's charge, it specifically denies that it has failed to negotiate in good faith in violation of RSA 273-A:5 I (e), or that it has violated the rights of bargaining unit members under the provisions of RSA 273-A:5 I (a), (b), (g), (h) and (i). The County states, among other things, that based upon the Union's unequivocal refusal to negotiate with respect to several proposals that were important to the County, the County suggested that the services of a mediator would be useful in assisting the parties in their apparent deadlock in negotiations. The County admits that during a negotiation session on November 9, 2005 the Union's representative advised the County that the County's failure to agree with certain of the Union's proposals and positions constituted "bad faith," notwithstanding the Union's insistence that it would not consider many of the proposals presented by the County. The County asserts that the Union has failed to state a claim upon which relief can be granted, that the Union is barred by its own "unclean hands" from claiming that the County has failed to bargain in good faith based upon its own refusals to consider certain of the County's proposals, that the Union's claim of bad faith bargaining, as it relates to any evidence occurring prior to June 27, 2005, is untimely, that the County had a legal right to request the assistance of a mediator under RSA 273-A:12 and has acted in good faith in exercising its rights under the law, and that it has acted in good faith in exercising its management rights under the law to reorganize its personnel. The County therefore requests that the PELRB (1) dismiss the Union's charge, and (2) deny its prayers for relief as lacking in substance on the merits and without a proper basis in law or fact.

A pre-hearing conference was conducted at PELRB offices, Concord, New Hampshire on March 8, 2006.

PARTICIPATING REPRESENTATIVES

For the Union: Jeffrey Brown, Field Representative/Negotiator

For the County: Warren D. Atlas, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Whether the County has failed to negotiate in good faith with the Union with respect to bargaining for a successor CBA.

- (2) Whether the County committed an unfair labor practice by reorganizing its facilities and maintenance functions and, in doing so, removing the Union's chapter president and another employee out of the bargaining unit.

WITNESSES

For the Union:

1. Robert Lozeau, Former Chapter President, Member – Union Bargaining Team
2. Martha Clark, C.O., Member – Union Bargaining Team
3. Sal Mills, Corporal, Member – Union Bargaining Team
4. Douglas Lambert, C.O., Member – Union Bargaining Team
5. Ralph Downes, C.O., Member – Union Bargaining Team
6. Bonnie McKinnon, Member – Union Bargaining Team
7. Jeffrey Brown - Field Representative/Negotiator*

For the County:

1. Kathleen Bateson, County Administrator, Member – County Bargaining Team
2. Sara Lewko, Human Resources Manager, Member – County Bargaining Team
3. Ronald White, DOC Superintendent, Member – County Bargaining Team
4. Richard Doucet, DOC Asst. Superintendent, Member – County Bargaining Team

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. (*In the event that Mr. Brown is called to testify, please note that the Board does not generally allow narrative testimony from a witness. Accordingly, the Union shall identify for the Board and the County the person who will conduct direct examination of Mr. Brown no later than five (5) days prior to the scheduled hearing date.)

EXHIBITS

Joint Exhibits:

1. Management Bargaining Proposals.
2. Union Bargaining Proposals.
3. Management Counter Proposals and Answers.
4. Union Counter Proposals and Answers.
5. Letter dated 11/28/05 from County to Jeff Brown.
6. Letter dated 12/5/05 from Union to Warren Atlas, Esq.
7. Letter dated 12/23/05 from Union to Warren Atlas, Esq.

For the Union:

None other than those marked as "Joint."

For the County:

1. 1/11/05 correspondence from Mr. Brown to Ms. Bateson.
2. 1/12/05 correspondence from Mr. Atlas to Mr. Brown.
3. 1/27/05 correspondence from Ms. Lewko to Mr. Brown.
4. 2/23/05 correspondence from Ms. Lewko to Mr. Brown.
5. 5/16/05 correspondence from Mr. Brown to Ms. Bateson.
6. 8/4/05 correspondence from Ms. Lewko to Mr. Brown.
7. 12/29/05 correspondence from Ms. Bateson to Mr. Brown.
8. 12/29/05 memorandums from Ms. Bateson to Mr. Lozeau and another.
9. 12/18/05 correspondence from Mr. Atlas to Mr. Brown, with attachments.
10. 12/9/05 correspondence from Mr. Atlas to Mr. Brown, with attachments.

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 (1) day.

DECISION

1. The County's request during the pre-hearing conference that the March 21, 2006 adjudicative hearing be postponed based upon a scheduling conflict for its counsel was granted. The parties are reminded to follow the Board's procedure, as set forth in Pub 201.07 (e), for requesting and obtaining continuances in the future.
2. The parties' representatives shall meet, or otherwise confer, 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 no later than **May 10, 2006**.
3. The undersigned-hearing officer shall conduct a supplemental pre-hearing conference with the parties' representatives, via telephone, on **May 17, 2006 at 1:30 P.M.**
4. 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.


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:

June 1, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 9th day of March, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Jeffrey Brown, Field Representative/Negotiator
Warren D. Atlas, Esq.