



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Lebanon Professional Administrative & Salaried
Employees Association

Complainant

v.

City of Lebanon

Respondent

*
*
*
*
*
*
*
*
*
*
*

Case No: M-0730-5

Decision No. 2006-070

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Lebanon Professional Administrative & Salaried Employees Association (hereinafter “the Union”) filed an unfair labor practice complaint on January 24, 2006 alleging that the City of Lebanon (hereinafter “the City”) committed unfair labor practices in violation of RSA 273-A:5 I. More specifically, the Union alleges four separate counts against the City, three of which relate to the bargaining unit position of City Assessor. In Count I, the Union contends that the City violated RSA 273-A:5 I (a), (b), (c), (g), (h) and (i) by attempting to remove the City Assessor position from the bargaining unit after it was unable to persuade the Union to voluntarily agree to such removal. In this regard, the Union points out that after the Union indicated to the City that it would not agree to the removal, the City unilaterally changed the position’s job description and then filed a modification petition with the Board. Arguing in the alternative, the Union maintains in Count II that the City’s conduct in not providing prior notice of the job description modifications to the Union, or an opportunity to negotiate over the impact of the changes, violate the terms of a settlement agreement reached by the parties on April 20, 2006. As a result, the Union alleges violations of RSA 273-A:5 I (a), (e), (g) and (i).

In Count III, the Union alleges that after the City Assessor and Assistant Assessor positions became vacant in late summer and fall of 2005, the City hired an independent contractor to perform assessing duties. The Union asserts that it was not given any prior notice that this would occur and that the City’s use of an outside contractor to perform bargaining unit work is a violation of RSA 273-A:5 I (a), (b), (c), (g) and (h). It also claims that the City’s use of the outside contractor is a *de facto* removal of said positions from the bargaining unit, thereby constituting a further violation of RSA 273-A:5 I (a), (b), (c), (e) and (g). Finally, in Count IV, the Union claims that the City has unlawfully failed and refused to provide the Union with a copy of the so called “Bennett Wage Study” after the Union, through its President George Sykes, requested a copy of said document on

November 9, 2005. According to the Union, the City's refusal in this regard constitutes a violation of RSA 273-A:5 I (a), (b), (e) and (g), since the information is reasonable and necessary for the Union the performance of its role as the exclusive representative. As remedies, the Union requests that the Board (1) find that the City has violated the law as alleged; (2) order the City to withdraw its modification petition; (3) order the City to cease and desist in its use of the law for the improper removal of positions from the bargaining unit; (4) order the City to cease and desist in its contracting out of bargaining unit work; (5) order the City of provide the Union with the "Bennett Wage Study;" and (6) order any other remedy that it deems just.

The City filed its answer denying the Union's charge on February 9, 2006. While the City generally admits to the chronology of events as described in the Union's complaint, it denies that it has committed any improper labor practice.

A pre-hearing conference was conducted on April 24, 2006 at the offices of the PELRB in Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Katherine McClure, Esq.

For the City: Mark T. Broth, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the City committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (g), (h) and/or (i) by its actions with respect to the City Assessor's position, specifically in proposing to the Union the removal of the position from the bargaining unit, then, after the Union would not agree with that proposal, altering the job description and filing a modification petition to have the position removed by the Board.
- (2) Whether the City violated RSA 273-A:5 I (a), (e), (g), and/or (i) by not giving the Union prior notice of changes to the City Assessor job description, and failing to negotiate with the Union over the impact of such changes, in breach of an April 20, 2005 settlement agreement between the parties.
- (3) Whether the City committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (c), (e), (g) and/or (h) by hiring an independent contractor during the fall of 2005 to perform assessing duties (i.e., bargaining unit work) for the City.
- (4) Whether the City committed an unfair labor practice in violation of RSA 273-A:5 I (a), (b), (e) and/or (g) by refusing to provide a copy of the "Bennett Wage Study" to the Union after the Union duly requested that it be furnished a copy of the report on November 9, 2005.

WITNESSES

For the Union:

1. George Sykes, President LPASE

For the City:

1. Mitzi Baron
2. Randall L. Chapman
3. Greg Mandsager
4. Mike Farrell
5. Wallace Stickney

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.
2. Settlement Agreement, re: PELRB Cases M-0730-1 & M-0730-2, dated 4/20/05.
3. Modification Petition filed in PELRB Case No. M-0730-4.
4. M. Baron memo to G. Sykes re: modification, dated 12/1/05.
5. Exchange of documents between parties re: Union's request for information, including Union letter dated 11/9/05.
6. City Assessor Job Description

For the Union:

None other than those marked above as joint.

For the City:

1. Media Coverage of hiring Interim Assessor

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 is three (3) hours.

DECISION

1. The Union's response to the City's Motion to Dismiss shall be filed with the PELRB on or before **May 8, 2006**. The Union shall also file, on or before **May 8, 2006**, a statement (a) specifying how the facts set forth in each count of the complaint violate the referenced subsections of RSA 273-A:5 I as cited therein; and (b) a statement of relief sought for each alleged violation.

2. The parties' representatives shall meet, or otherwise confer, on or before **May 8, 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 at the time written submissions are filed, or least five (5) days prior to the date of the hearing, as the case may be.

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.

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 will be held on:

May 9, 2006 @ 9:30 a.m.

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

So ordered.

Signed this 27th day of April, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:
Katherine McClure, Esq.
Mark T. Broth, Esq.