



State of New Hampshire  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

USWA Local 8938, Manchester Water Works  
Employees

Complainant

v.

City of Manchester Water Works

Respondent

Case No. M-0545-46

Decision No. 2006-106

City of Manchester Water Works

Complainant

v.

USWA Local 8938, Manchester Water Works  
Employees

Respondent

Case No. M-0545-47

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The USWA Local 8938, Manchester Water Works (hereinafter "the Union") filed an unfair labor practice complaint (M-0545-46) on May 1, 2006 alleging that the City of Manchester (hereinafter "the City") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), (e), and (h). The Union's claims relate to negotiations over the still unsigned July 1, 2004-June 30, 2007 CBA. The Union raises issues concerning supplemental workers' compensation benefits which are discussed in paragraph 33.2 of the CBA at issue, and contends that the City's version of the CBA does not accurately reflect the parties' agreement as to supplemental workers' compensation and potentially other matters. The Union contends the agreement for supplemental workers' compensation benefits is supposed to be the same as is in place with the other bargaining units. According to the Union, this requires that the phrase "as amended from time to time" (which appears

at the end of the first sentence of paragraph 33.2 of the CBA in dispute) be stricken. The Union also argues that this language should be stricken in any event as it is inoperative because of the Board decision in 1995-43 and on account of the reference to the January 1, 1992 effective date which appears in the prior CBA and the proposed CBA at issue in this case.

As remedies, the Union requests that the PELRB (1) enforce the agreement; (2) order negotiations to review (sic) and (3) grant such other relief as may be just.

The City filed its answer and Motion to Dismiss denying the Union's charge on May 16, 2006. The City disputes most of the Unions factual allegations and seeks dismissal on the grounds that the Union's pleadings are insufficient and do not satisfy the requirements of RSA 273-A:6 I and Pub 304.01 (b) and because the Union's complaint is untimely. Accordingly, the City requests that the PELRB (A) summarily dismiss the Union's ULP; (B) otherwise dismiss the Union's ULP; (C) deny the Union's ULP; (D) order the Union to pay the Water Work's costs pursuant to RSA 273-A:6 VI; and or (E) order such other relief as may be just. The Union filed its objection to the Motion to Dismiss on May 30, 2006.

The City also filed an unfair labor practice complaint (M-0545-47) on May 16, 2006 alleging that the Union committed unfair labor practices in violation of RSA 273-A:5 II (d), (f) and (g). The City contends the parties reached agreement in mediation in January 2005 as to supplemental workers' compensation. The City argues that the CBA it prepared for signature (and ultimately filed unsigned with the PELRB on November 7, 2005) accurately reflects the parties' entire agreement and otherwise all steps have been taken to approve the CBA and the Union is improperly refusing to sign the agreement. The City asserts that by failing to sign the CBA the Union has failed to cooperate in mediation, breached the CBA, failed to negotiate in good faith, and violated Pub 207.03 (b) by failing to sign the CBA.

As remedies the City requests that the PELRB (A) find that the Union violated RSA 273-A: 5, II (d), (f) and (g); (B) order the Union to sign the 2004-2007 CBA; (C) order the Union to pay the costs incurred by the Water Works pursuant to RSA 273-A: 6, VI (c); and (D) order such other relief as my be just.

The Union filed its answer denying the City's charge on May 31, 2006. The Union disputes most of the City's chronology of events and denies that it has committed any violations as claimed by the City.

A pre-hearing conference before the undersigned Hearing Officer was conducted on July 12, 2006 at the PELRB offices, Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the Union: Vincent A. Weners, Esq.

For the City: David A. Hodgen, Chief Negotiator

ISSUES PRESENTED FOR BOARD REVIEW

Case No. 0545-46

- (1) Whether the City committed an ULP within the meaning of RSA 273-A:5 I (a),(b),(c),(e) and (h) given the form and content of the CBA it prepared and in particular when it failed to exclude the "as amended from time to time" language in paragraph 33.2 of the CBA at issue and requested the Union's signature thereon?
- (2) Whether the Union's complaint is untimely within the meaning of RSA 273-A 6 VII and should be dismissed?
- (3) Whether the Union's charge that the City violated RSA 273-A:5 I (c) should be dismissed because the Union has failed to show that it has exhausted all administrative remedies provided by statute?

Case No. M-0545-47

- (4) Whether the Union committed an ULP within the meaning of RSA 273-A:5 II (d),(f) or (g) by failing to sign a CBA in the form presented by the City?

WITNESSES

For the Union:

1. Michael Roche
2. Robert Cochran
3. George Magnan
4. Michael Olmstead

For the City:

1. Thomas Bowen
2. Robert Beurivage
3. George Magnan III
4. David A. Hodgen

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:

None at this time.

### For the Union:

1. Notes from negotiations session of 10-6-04
2. Notes from Mediation session 1-17-05

### For the City:

1. Tentative Agreement Doc. 1/7/05 (Ex. A)
2. City Clerk Doc. 1/26/05 (Ex. B)
3. USWA Doc. 10/19/05 (Ex. C)
4. CBA 7/1/04-6/30/07
5. Filing Letter 11/7/05

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 (½) 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

1. As agreed by the parties, PELRB Case No. M-0545-46 and Case No. M-0545-47 are consolidated.
2. The parties shall file their respective pre-hearing worksheets in reference to Case No. M-0545-47 by July 19, 2006. Any additional witnesses or exhibits on these worksheets are incorporated by reference in this order.

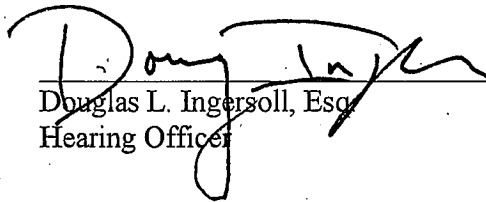
3. The parties' representatives shall meet, or otherwise confer, on or before August 1, 2006, in attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. In the event that agreement is reached to submit the case by written submission, the parties shall forthwith file a joint statement indicating such agreement and include a proposed schedule for the parties' filings.
4. If the matter is to proceed to a hearing before the Board, the parties' representatives shall meet, or otherwise confer, on or before August 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 at least five (5) days prior to the date of the hearing, as the case may be.
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.
6. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
7. 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:

**September 28, 2006 @ 9:30 AM**

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

So ordered.

Signed this 12th day of July, 2006.

  
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Douglas L. Ingersoll, Esq.  
Hearing Officer

Distribution:

Vincent A. Wenners, Jr., Esq.

David A. Hodgen, Chief Negotiator