



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Teamsters Local 633 of New Hampshire,
Seabrook Police Association

Complainant

v.

Town of Seabrook

Respondent

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Case No: P-0736-14

Decision No. 2006-114

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Teamsters Local 633 of NH/Seabrook Police Association (hereinafter "the Union") filed an unfair labor practice complaint on April 28, 2006 alleging that the Town of Seabrook (hereinafter "the Town") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (d), (g),(h). It also alleged a violation of "sub section II (f)" [sic]. The Town filed its answer denying the Association's charge on April 28, 2006. The Town generally denied that it undertook any action that constituted a violation of the statute. Further, the Town asserted that the Union complaint failed to satisfy the requirements of Pub 201.02 (b) (4) requiring certain information be provided in the complaint. An initial preliminary hearing was conducted by telephone conference with the parties that resulted in a procedural decision by the PELRB. (See Decision #2006-074). The order required that the Union subsequently file an amended complaint. On May 10, 2006 the Union did comply with that order and provided additional details of the alleged wrongful conduct by the Town.

The Town then supplemented its initial answer denying that Police Officer Mike Frost was terminated from his employment as a full-time officer because of his testimony at a grievance hearing, but rather that he voluntarily resigned from full-time employment and following subsequent Town assignment to Special Officer status, he regularly and routinely refused to work available shifts offered to him in that capaTown and refused to meet with the police chief regarding these refusals.

The Union seeks a cease and desist order against the Town and reinstatement of Officer Frost to full-time status and that he be "made whole". The Town requests, among other requests, that the complaint be dismissed.

A pre-hearing conference was conducted on August 2, 2006 at the PELRB offices, Concord, New Hampshire before the undersigned Hearing Officer.

PARTICIPATING REPRESENTATIVES

For the Union: Jeffrey Padellaro, Business Agent, Teamsters Local 633

For the Town: Mark T. Broth, Esq., Devine Millimet & Branch, Professional Association

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether Mr. Frost's employment status was altered by the Town because of his testimony at a grievance hearing, for other discriminatory reasons or for reasons of conduct that are protected under RSA 273-A or the parties' collective bargaining agreement.

WITNESSES

For the Association:

1. Fred Welch, Town Manager
2. David Currier, Police Chief
3. Michael Frost, former Police Officer
4. Mark Preston, Police Sergeant
5. Mike Gallagher, Police Sergeant

For the Town:

1. Patrick Manthorn, Deputy Police Chief
2. Michael Frost, former Police Officer
3. Fred Welch, Town Manager
4. Mike Gallagher, Police Sergeant
5. David Currier, Police Chief
6. Mark Preston, Police Sergeant

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. None submitted

For the Association:

1. Board of Selectmen Meeting Minutes, non-public session dated March 29, 2005
2. Letter of Concern from Union to Town dated in or about April of 2005
3. Collective Bargaining Agreement, effective April 1, 2002 to March 31, 2006
4. Time/Payroll records relating to Mr. Frost

For the Town:

1. Mr. Frost's personnel file documents regarding resignation and retirement
2. Correspondence to and from Mr. Frost
3. Dispatcher record of Departmental "Call-in" attempts made of Mr. Frost

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 (1) 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 fifteen (15) days prior to the date of the evidentiary hearing.

ORDER

1. The Union's allegation of a violation by the Town of RSA 273-A:5, II (f) is dismissed as that provision of the statute relates solely to actions of the Union that are prohibited and does not govern actions of the Town, as a public employer.
2. The parties have stipulated that when in part-time status, Officer Frost was not covered by CBA. Therefore no further evidence is required by the PELRB of this fact at hearing.
3. The Union has waived any requirement for the Town to offer testimony of any Police Dispatcher as to the authenticity or accuracy of certain records kept and maintained relevant to so-called "call-in" attempts.
4. The parties have represented that neither of them anticipates any problem in sharing any documents relevant to this matter. In the event that either party believes that information requested is not being provided or not being provided in a timely manner, that party shall inform the PELB, in writing or by e-mail, of the information requested, the basis for the request, and whether the opposing party has refused or is not complying with the request in a timely manner and inform the opposing party in such manner as it has notified the PELRB. The party in possession, custody, or control of the information or document shall then provide the information to the requesting party within twenty-four (24) hours or shall inform the PELRB, in writing or by e-mail within the same twenty-four (24) hour period, of its reason for not

complying with the request prior to the notice of the requesting party to the PELRB of the refusal or delay.

5. Parties shall redact any non-material or irrelevant information from any personnel or other document prior to its distribution or use at hearing, provided however, all parties shall have in their possession at hearing a non-redacted and complete document in the event its redacted form is challenged by the other party as not being a fair representation of the exhibit or is otherwise requested by the PELRB for review.
6. The parties' representatives shall meet, or otherwise confer, seven (7) days prior to the date of the evidentiary hearing in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate. Thereafter, each shall indicate their agreement by executing the same or an identical copy of the stipulations of fact, and file that document with the PELRB least five (5) days prior to the date of the evidentiary hearing.
7. 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.
8. The parties shall file any additional preliminary, procedural or dispositive motions no later than ten (10) calendar days prior to the scheduled hearing date.
9. 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:

August 22, 2006 @ 9:30 a.m.

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

So ordered.

Signed this 3rd day of August, 2006.



Donald E. Mitchell, Esq.
Hearing Officer

Distribution:
Jeffrey Padellaro, Business Agent Teamsters
Mark T. Broth, Esq.