



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

International Union, UAW Local 2232,
Professional Unit

Complainant

v.

City of Nashua

Respondent

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Case No. G-0043-2

Decision No. 2007-184

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On November 14, 2007 the United Auto Workers, Local 2232, Professional Unit ("Union") filed a complaint stating that the City of Nashua ("City") violated RSA 273-A:5 when it allegedly engaged in a pattern of retaliatory and discriminatory conduct against union representatives who participated in concerted, protected activity. The Union claims that the City's retaliatory activity included the issuance of discipline and less favorable performance evaluations for the union representatives, as well as an adverse change in work schedule for at least one representative. The Union alleges that the City took these improper actions in response to a union representative's complaint presented initially to Management, and eventually to the State Attorney General's office, that another employee engaged in behavior that breached the City's Information Technology ("IT") security policy.

As remedies, the Union requests that the PELRB 1) order the City to rescind all retaliatory discipline and unfavorable evaluations, 2) order the City to restore the original work schedules for the Complainants, 3) order the City to make whole the Complainants for all losses, and 4) order the City to cease and desist all discriminatory and disparaging conduct.

The City filed its answer denying the charges on November 29, 2007. While the City acknowledges that the Complainants' were subject to a verbal reprimand and a changed work schedule respectively, the City contends that these were not the result of any retaliatory and discriminatory intent. Instead, the City claims that the reprimand resulted from a Complainant's improper actions as an employee rather than as a union representative. Specifically, the Complainant allegedly failed to complete an assigned task in a professional manner. The City

contends that certain portions of the Complaint related to this issue are previously settled through the parties' contractual grievance procedure.

As to the change in work schedule, the City states that the re-assignment of one Complainant's work schedule was only undertaken so that he and his supervisor would have a greater amount of time to collaborate on a work project. Finally, the City denies that the annual work performance evaluation at question was unfavorable.

Accordingly, the City requests that the PELRB: 1) dismiss the unfair labor practice charge; 2) order the Union to reimburse the City for its expenses and fees in answering this Complaint; and 3) order such further relief as may be just and equitable.

On December 4, 2007, the Petitioner filed an Assented to Request to Continue this matter which was originally scheduled for a pre-hearing conference on December 14, 2007. The Request to Continue was granted on December 5, 2007. See PELRB Decision No. 2007-172.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on December 21, 2007.

PARTICIPATING REPRESENTATIVES

For the Union: Carol Knox, ICWU Representative

For the City: Stephen M. Bennett, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Complainant bargaining unit employees were engaged in concerted, protected activity.
2. Whether the City engaged in improper discriminatory and retaliatory actions against bargaining unit employees participating in concerted, protected activity.
3. Whether certain allegations in the Complaint were previously settled under the parties' contractual grievance procedure.

WITNESSES

For the Union:

1. Jim Campbell, UAW Steward, City of Nashua employee

2. Brian O'Neill, Web Analyst, Info. Technology Div., City of Nashua
3. Dawn Roy, UAW Steward, City of Nashua employee
4. David Springfield, Technical Specialist, Info. Technology Div., City of Nashua

For the City:

1. John Barker, Division Director, Info. Technology Div., City of Nashua
2. Jane Joyce, former Director of Human Resources for City of Nashua
3. Maureen Lemieux, Administrative Division Director, City of Nashua
4. Nate Lloyd, employee, Info. Technology Div., City of Nashua
5. Angelo Marino, former Manager of Info. Technology Dept., City of Nashua
6. Sherry Pratt, employee, Info. Technology Div., City of Nashua

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.

EXHIBITS

Stipulated Joint Exhibits:

1. Written memorialization of oral grievance presented by D. Springfield to J. Barker, dated June 1, 2007.
2. Proposed Memorandum of Understanding drafted by U.A.W. for consideration at July 24, 2007, Step 3 Grievance hearing (undated).
3. Denial of Step 3 Grievance, dated August 14, 2007; Grievance filed by U.A.W., dated June 25, 2007; Appeal to Step 2 of grievance process filed by U.A.W., dated July 6, 2007; Appeal to Step 3 of grievance proves filed by U.A.W., dated July 12, 2007.
4. E-mail from J. Barker to D. Springfield, dated August 22, 2007; Written memorialization of verbal reprimand, dated August 23, 2007, and six page attachment of related e-mails between J. Barker and D. Springfield, dated August 13th – 17th, 2007.
5. Annual performance evaluation for D. Springfield for FY 2007.
6. City of Nashua Position Description Form for Technical Specialist II/Network Support (pending City confirmation that submitted copy reflects the most recent position description).
7. Collective Bargaining Agreement between the parties, effective 2006 – 2009.
8. E-mails between J. Barker and D. Springfield dated May 29 and May 30, 2007.
9. E-mail from D. Springfield to IT employees, dated May 2, 2007
10. Letter from Asst. AG L. Noether to S. Bennett, dated September 28, 2007, and attached material.

For the Union:

1. B. O'Neill notes from May 17, 2007 staff meeting.
2. E-mails between D. Springfield and J. Barker regarding a meeting to discuss events from May 17, 2007 staff meeting, dated May 30, 2007.
3. E-mail from D. Springfield to C. Knox, dated May 31, 2007.
4. Denial of Step 1 Grievance, dated June 11, 2007.
5. Annual performance evaluations for D. Springfield, for FY 2006, FY 2004, FY 2003; City of Nashua Probationary Employee Evaluation, dated November 5, 2002.
6. E-mail from Asst. AG L. Noether to D. Springfield, dated August 22, 2007.

For the City:

1. E-mail and attached memo from S. Bennett to J. Barker, D. Clarke, and M. Lemieux, dated May 17, 2007.
2. Statement of J. Barker, dated May 17, 2007.
3. E-mail from J. Barker to S. Bennett, D. Clarke, and M. Lemieux, dated May 30, 2007.

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 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 6 hours. 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 20 days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before January 4, 2008, to attempt to stipulate to the submission of this case in writing or, in the alternative, without the need for formal testimony. The parties shall file forthwith a joint statement setting forth any such agreement and include a proposed schedule for the parties' filings.
2. If the matter is to proceed to a hearing before the Board, counsel shall meet, or otherwise confer, on or before January 4, 2008 in order to agree on further joint exhibits and to compose a mutual statement of agreed facts. In particular, counsel shall discuss stipulation to any remaining electronic mail that is proposed as an exhibit but is not yet stipulated to as a joint exhibit. The parties' shall file all additional joint exhibits, factual stipulations, and other exhibits properly marked for

identification on or before January 8, 2008. If these materials are submitted electronically the parties do not have to otherwise file the original and five copies.

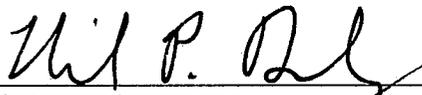
3. Counsel shall file any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, on or before January 8, 2008.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than January 4, 2007, and any responses or objections thereto shall be filed on or before January 8, 2007.
5. Counsel for the Union shall prepare and file by January 8, 2008, a calculation of the financial amount at issue for each Complainant pursuant to its stated request for a make-whole remedy.
6. The City shall, if it has not already, immediately post a copy of the original Complaint pursuant to its obligation under Pub. 201.02 (e).
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:

January 10, 2008 @ 9:30 a.m.

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

So ordered.

December 21, 2007.



Neil P. Daly, Esq.
Staff Counsel/Hearing Officer

Distribution:

Carol Knox, ICWU Representative
Stephen M. Bennett, Esq.