



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME COUNCIL 93, LOCAL 863/ROCHESTER
PUBLIC WORKS DEPT. BUILDINGS AND GROUNDS**

COMPLAINANT

v.

CASE NO. G-0024-6

DECISION NO. 2009-037

**CITY OF ROCHESTER, DEPT. OF PUBLIC WORKS
AND BUILDINGS AND GROUNDS**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: February 20, 2009

Appearances: Complainant: Karen Clemens, Esq.
Respondent: Thomas J. Flygare, Esq.

Background:

AFSCME Council 93, Local 863/Rochester Public Works Department Buildings and Grounds ("Union") filed an unfair labor practice complaint on December 29, 2008. The Union claims that the City of Rochester ("City") violated RSA 273-A:5, I (c), (d), and (g) by refusing to award merit increases to employees of the Public Works Department's Buildings and Grounds Division in retaliation for their successful petition to be included in the Public Works bargaining unit.

The Union requests that the PELRB find that the City of Rochester Public Works Department is in violation of RSA 273-A:5, I (c), (d), and (g) and is therefore guilty of unfair labor practices; order the City to provide appropriate wage adjustments to the Buildings and Grounds employees effective July 1, 2008; order the City to publicly post the findings of the PELRB for 30 business days; and order the City to make the Union whole for any and all costs and expenses incurred to pursue the unfair labor practice charge.

On January 12, 2009 the City filed an answer denying all claims of retaliation against the Buildings and Grounds employees and denying all allegations that these employees are entitled to merit step increases while negotiations pursuant to an Order to Negotiate from the PELRB, Decision No. 2008-044, are ongoing.

The City requests that the PELRB dismiss the complaint with prejudice and order the Union to reimburse the City for its expenses and fees in connection with this matter.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the City's refusal to give the Buildings and Grounds employees merit increases under the Collective Bargaining Agreement or under the City Employment Policy Handbook constitutes a violation of RSA 273-A:5, I (c), (d), and (g).

2. Whether the City was compelled to grant Buildings and Grounds employees pay increases on July 1, 2008, while the City was subject to an Order to Negotiate from the PELRB, Decision No. 2008-044.

WITNESSES

For the Union:

1. Bryan Lamirande
2. Mark Dixon
3. Larry Downes
4. David Silvia

For the City:

1. John Scruton
2. Melody Esterberg
3. Brian Lebrun
4. Diane Hoyt

Both parties reserve the right to amend their Lists of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective lists will be available at the hearing.

EXHIBITS

For the Union:

1. Collective Bargaining Agreement, 2003-2007
2. PELRB Decision No. 2008-035
3. PELRB Decision No. 2008-077
4. City of Rochester Employment Policy Handbook
5. Union's contract proposal, dated December 9, 2008
6. City's counter-proposals, dated January 6, 2009
7. Letter to John Scruton, dated December 9, 2008
8. Letter from Thomas Flygare, Esq., dated December 19, 2008

For the District:

1. PELRB Decision No. 2008-044

Both parties reserve the right to amend their Lists 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. 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.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.
2. At the pre-hearing conference, the parties indicated that they are engaged in discussions which will likely result in agreement to submit this case on stipulated facts and briefs; and that they wish to reschedule the evidentiary hearing currently scheduled for March 3, 2009. Based upon representations and requests of the parties, the evidentiary hearing is rescheduled for **May 5, 2009**. A rescheduling notice will be issued.
3. The parties shall determine and inform the PELRB whether they would prefer to submit the case on stipulated facts and briefs no later than April 30, 2009. If the parties decide to submit the case on stipulated facts and briefs, the parties shall file an agreed upon proposed schedule of the submission of the stipulated facts, exhibits, opening briefs and reply briefs, if any, no later than April 30, 2009. In the absence of communication from the parties indicating their preference for submission of the case on stipulated facts and briefs, the following schedule will apply.
4. The parties shall prepare and file a Statement of Stipulated Facts no later than 5 days prior to the scheduled evidentiary hearing.

5. The parties shall amend and exchange their Witness and Exhibit lists no later than 5 days prior to the scheduled evidentiary hearing.

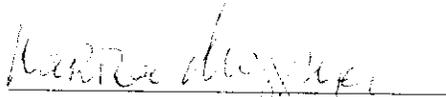
6. The parties shall pre-mark any exhibits for identification prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

HEARING

Unless otherwise ordered as a result of the filing of a motion to submit the case on stipulated facts and briefs or other motion, the evidentiary hearing between the parties will be held on **May 5, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. The time set aside for this hearing is 4 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 5 days prior to the date of hearing.

So ordered.

February 20, 2009


Karina A. Mozgovaya, Esq.
Staff Counsel/Hearing Officer

Distribution:

Thomas J. Flygare, Esq.

Karen E. Clemens, Esq.

Bryan Lamirande, Staff Rep.