



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EXETER POLICE ASSOCIATION

COMPLAINANT

v.

TOWN OF EXETER

RESPONDENT

CASE NO. G-0087-1

DECISION NO. 2009-061

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: March 20, 2009

Appearances: Complainant: J. Joseph McKittrick, Esq.
Respondent: Thomas J. Flygare, Esq.

Background:

Exeter Police Association (Union) filed an unfair labor practice complaint against the Town of Exeter (Town) on February 23, 2009. The Union claims that the Town violated the parties' Collective Bargaining Agreement (CBA) and RSA 273-A:5, I (a), (b), (c), (d), (e), (g), (h), and (i) by unilaterally changing the manner in which the leave, including Family Medical Leave Act (FMLA) leave, was granted and how such leave was paid. The Union also claims that the CBA does not have a workable grievance procedure because it only provides for a non-

binding advisory arbitration and because the advisory arbitration has never succeeded in resolving the parties' disputes in the past.

The Union requests the PELRB to order that the Town rescind its unilateral change in the application of leave in general and Article 12.5.4. of the CBA in particular and order that all officers who have been negatively impacted by the Town's actions be made whole.

The Town filed an answer on March 3, 2009 denying the charge and asserting that the complaint should be dismissed because the Union has filed grievances on these issues but failed to exhaust the grievance procedure set out in the parties' CBA.

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

On March 18, 2009 the Town filed a motion to dismiss on the ground that the PELRB does not have jurisdiction to hear the case because the Union failed to comply with the grievance procedure in the parties' CBA.

At the pre-hearing conference on March 20, 2009 the parties made a joint motion to hold the matter in abeyance until May 29, 2009 to allow the parties to bargain over the application of the FMLA leave procedure. The parties indicated that there is a strong possibility that they will be able to come to an agreement on the substantive issues of the dispute. The complaining party also indicated that it intends to file a Petition for a Declaratory Ruling to determine whether the parties' CBA has a workable grievance procedure.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case.

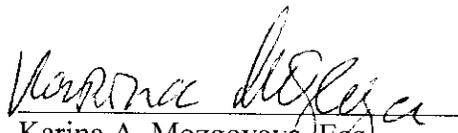
2. The parties' joint motion to hold this matter in abeyance is granted. The currently scheduled hearing is cancelled. This matter shall be held in abeyance until **May 29, 2009**.

3. This matter shall be dismissed after May 29, 2009 unless one of the parties files a Petition for a Declaratory Ruling or a Request for Further Proceedings before May 29, 2009, in which event a hearing will be scheduled.

4. While this matter is held in abeyance, the parties shall negotiate the issues concerning the application of the FMLA and related matters and shall attempt to resolve the issues concerning the contractual grievance procedure. The Union's representative shall provide the PELRB with a status report on negotiations every 30 days, starting with the date of this order, and shall inform the PELRB of any settlement of the pending issues immediately.

So ordered.

March 20, 2009


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

Distribution:

J. Joseph McKittrick, Esq.

Thomas J. Flygare, Esq.