



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**PITTSFIELD TOWN EMPLOYEES, AFT-NH,
LOCAL 6214**

COMPLAINANT

CASE NO. G-0060-5

v.

TOWN OF PITTSFIELD

**DECISION NO. 2009-123
(CORRECTED)**

RESPONDENT

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: June 22, 2009

Appearances: Complainant: Teresa D. Donovan, Esq.
Respondent: Daniel Schwarz, Esq.

Background:

Pittsfield Town Employees, AFT Local 6214, AFT-NH, AFL-CIO (Union) filed an unfair labor practice complaint against the Town of Pittsfield (Town) on May 13, 2009. The Union claims that the Town breached the parties' Collective Bargaining Agreement (CBA) by denying an employee's request to use sick time for his Family Medical Leave requested for the purpose of caring for the employee's ailing spouse. The Union asserts that the Town's actions violate RSA 273-A:5, I (h) and are in contradiction to the PELRB Decision No. 2009-067 which addresses the same issue between the same parties.

The Union requests the PELRB to order the Town to adjust the subject employee's leave records to reflect the use of sick leave during the period of Family Medical Leave and to restore

his vacation time and to order the Town to comply with the PELRB Decision No. 2009-067.

On June 5, 2009 the Town filed an answer denying the charge. The Town requests that the PELRB dismiss the charge and award the Town its fees and expenses in defending the charge.

At the pre-hearing conference, the counsel for the Town represented that the Town, in compliance with the PELRB Decision No. 2009-067, reversed its decision concerning the employee's use of sick time for his Family Medical Leave, allowing the employee to use the sick time and restoring the vacation time he used to cover for his Family Medical Leave. The counsel for the Town further represented that the Town intends to comply with the PELRB Decision No. 2009-067 and the PELRB Decision on the Town's Motion for Review currently pending and that the Town believes that this matter has been resolved as the Town satisfied the Union's request for relief. Although the counsel for the Union confirmed that the employee was allowed to use his sick time and that his vacation time has been restored, the counsel indicated that the Union disagrees that the underlying issue has been resolved.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the Town violated the parties' CBA by refusing to allow the employee to utilize his accrued sick leave prior to vacation leave when applying for Family Medical Leave to care for his spouse.

WITNESSES

For the Union:

1. Philip Gordon
2. Jennifer Tedcastle
3. Rick Walter
4. Jeff Cain

For the Town:

1. Linda Small
2. Paul Skowron

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

Joint and Agreed:

1. Collective Bargaining Agreement
2. Selectmen's letter to all employees (July 22, 2008)
3. Paul Skowron's letter to Philip Gordon (April 9, 2008)
4. Formal Grievance to Board of Selectmen and Paul Skowron (April 22, 2009)
5. Paul Skowron's letter to Richard Walter (April 24, 2009)
6. Linda Small's letter to Richard Walter (May 6, 2009)
7. PELRB Decision No. 2009-067
8. Philip Gordon's request for Family Medical Leave (March 19, 2009)
9. Paul Skowron's Letter to Philip Gordon with attachments (March 20, 2009)

For the Union:

1. Email from Philip Gordon to Paul Skowron (June 2, 2009)
2. Letter from Paul Skowron to Philip Gordon (June 4, 2009)
3. Other pertinent communications

Both parties reserve the right to amend the 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. The parties shall meet and discuss possibilities of a settlement prior to the scheduled adjudicatory hearing. The complaining party shall inform the PELRB of any settlement of the pending issues immediately. In the absence of communication from the complaining party indicating that it withdraws the complaint, the following schedule will apply.
3. The parties shall prepare and file a Statement of Stipulated Facts reflecting most recent developments in the case no later than 10 days prior to the scheduled adjudicatory hearing.
4. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than 10 days prior to the scheduled adjudicatory hearing.
5. The parties shall pre-mark any exhibits prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.03.

HEARING

Unless otherwise ordered as a result of the filing of a Motion to Withdraw the Complaint or other motion, the adjudicatory hearing between the parties will be held on **July 21, 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 3 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 10 days prior to the date of hearing.

So ordered.

June 22, 2009



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

Distribution:
Theresa D. Donovan, Esq.
Daniel Schwarz, Esq.