



**STATE OF NEW HAMPSHIRE**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AFSCME LOCAL 3657/MERRIMACK  
POLICE AND FIRE OFFICERS**

**COMPLAINANT**

**CASE NO. G-0002-3**

**v.**

**DECISION NO. 2009-252**

**TOWN OF MERRIMACK**

**RESPONDENT**

**PRE-HEARING MEMORANDUM AND ORDER**

Date of Conference: November 13, 2009

Appearances: Complainant - Karen E. Clemens, Esq.  
Respondent - Matthew H. Upton, Esq.

Background:

AFSCME Local 3657, Merrimack Police and Fire Officers (Union) filed an unfair labor practice complaint against the Town of Merrimack (Town) on September 30, 2009. The Union claims that the Town violated RSA 273-A:5, I (a), (b), (c), (e), and (g) by providing all non-union employees earning \$45,000 or more a \$1,000 stipend in order to "minimize the chance of additional unions forming." See Unfair Labor Practice Complaint.

The Union requests that the PELRB find that the Town has violated RSA 273-A:5, I (a), (b), (c), (e), and (g); order the Town to cease and desist violating RSA 273-A:5; order the Town to publicly post the findings of the PELRB for 30 business days; and order the Town of make the

Union whole for any and all costs and expenses incurred to pursue the unfair labor practice charge.

The Town filed an answer to the complaint on October 15, 2009. The Town denies the charge of unfair labor practice and asserts that the stipend was provided to respond to the concerns over employee morale stemming from a freeze in non-union employees' salaries. The Town requests that the PELRB deny the Union's complaint, deny the Union's requests for relief, and find that the Town has acted appropriately in accordance with RSA 273-A and the parties' Collective Bargaining Agreement.

On November 13, 2009 the representatives for the Union and the Town attended a pre-hearing conference at the PELRB offices in Concord. At the pre-hearing conference, the Union's representative indicated that the Union intends to amend its complaint to add another request for relief. The Town's representative indicated that the Town intends to file a motion to continue the hearing.

#### ISSUES FOR DETERMINATION BY THE BOARD

Whether the Town of Merrimack violated RSA 273-A:5, I (a), (b), (c), (e), and (g) when it provided all non-union employees earning over \$45,000 a \$1000 stipend?

#### WITNESSES

For the Union:

1. Steve Lyons

For the Town:

1. Keith Hickey
2. Thomas Mahon

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. The parties' Collective Bargaining Agreement, expiration date June 30, 2010

For the Union:

1. June 25, 2009 non-public minutes of Merrimack Town Council

For the Town:

1. Internal memos regarding raises

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. The Union may amend its complaint on or before **November 23, 2009**, in which event the Town shall file an answer to the amended complaint on or before **December 1, 2009**.
3. The Town shall file a motion to continue, if any, in accordance with the requirements of Pub 201.08, no later than **November 24, 2009**.

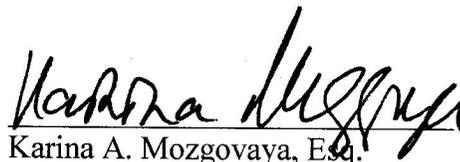
4. The parties shall file a Statement of Stipulated Facts no later than **10 days** prior to the scheduled adjudicatory hearing.
5. The parties shall amend, exchange, and file their Witness and Exhibit lists no later than **10 days** prior to the scheduled adjudicatory hearing.
6. The parties shall pre-mark 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 continue or other motion, the adjudicatory hearing between the parties will be held on **December 3, 2009 at 9:30 AM** at the offices of the Public Employee Labor Relations Board in Concord. In the event that the presently scheduled adjudicatory hearing shall be continued, all time references as appear in paragraphs 4, 5, and 6 of the DECISION SECTION shall be based upon the rescheduled date for the adjudicatory hearing. The time set aside for this hearing is 3 hours. If either party believes that additional time is required, a written notice of the need for additional time shall be filed with the PELRB at least **7 days** prior to the date of hearing.

So ordered.

November 13, 2009

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

**Distribution:**

Karen E. Clemens, Esq.  
Matthew H. Upton, Esq.  
Steven Lyons, Staff Representative  
Keith Hickey, Town Manager