



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Professional Fire Fighters of Goffstown, IAFF Local 3420

v.

Town of Goffstown

Case No. G-0186-1

Decision No. 2012-128

Order

This case was submitted for decision on stipulated facts and briefs. For the reasons that follow, the Town's request for dismissal is granted because the current dispute over pay increases is subject to the grievance procedure contained in the parties' collective bargaining agreement (CBA). This order of dismissal is without prejudice to the right of the Union to file an unfair labor practice charge to the extent necessary upon the completion of the last step of the grievance procedure.

Background:

The Union filed a complaint charging that the Town committed an unfair labor practice when it refused to pay certain firefighters an increase in their hourly wage to which they were allegedly entitled under the CBA upon completion of their probationary period.¹ The Union claims the Town has violated RSA 273-A:5, I (a), (b), (e), (f), (g), and (i), RSA 273-A:3, and RSA 273-A:4. The Town denies the charges and claims, among other things, that the PELRB

¹ The Union withdrew its claim that the collective bargaining agreement grievance procedure is unworkable.

has no jurisdiction to hear this case because the Union has not followed the grievance procedure. The Town requests dismissal of the charge or, in the alternative, a finding that the Town did not commit an unfair labor practice.

Subsequent to the pre-hearing conference the parties' request to submit this case for decision on stipulations and briefs was approved, and the parties have completed their filings according to the established schedule.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

As reflected in the CBA, which is on file with the PELRB and relevant portions of which are cited in the Union's brief, the last step of the contractual grievance procedure, set forth in Section 13.4 of Article 13 of the CBA, is a hearing before the Board of Selectmen followed by their written decision within fifteen days of the hearing date. The decision of the Board of Selectmen is "final" but not "final and binding." The Union did not proceed to this step of the grievance procedure but instead filed an unfair labor practice charge. The Town seeks dismissal, contending the Union has not completed this contractual grievance process, and therefore the PELRB lacks jurisdiction over the complaint. The Union objects, contending that it needed to file an unfair labor practice charge to meet the six month limitation period set forth in RSA 273-A:6. The Union also argues it would have been futile to proceed with the last step of the grievance procedure, and the PELRB does have jurisdiction over its complaint based upon a prior PELRB decision in an earlier case involving the same parties, *Professional Firefighters of Goffstown Local 3420, IAFF v. Town of Goffstown*, Case No. F-0143-7, PELRB Decision No.

2007-048 (April 13, 2007). In that earlier case, the PELRB denied the Town's request for dismissal and agreed the PELRB had jurisdiction to consider the merits of the complaint.

The PELRB was presented with the same jurisdictional issue now raised by the Town in a recent case, *White Mountains Educational Support Personnel/NEA-New Hampshire v. White Mountains Regional School District*, Case No. E-0096-1, PELRB Decision No. 2010-109 (June 3, 2010). In that case, the PELRB granted the District's dismissal request based upon the Union's failure to complete the contractual grievance process. The PELRB ordered dismissal despite the Union's argument that completing the grievance procedure, which culminated in a decision by the public employer (the school board), would be futile and the PELRB would have jurisdiction over the complaint after completion of the grievance process. The PELRB's dismissal order relied upon *Appeal of State Employee's Association*, 139 N.H. 441 (1995). In *Appeal of State Employee's Association*, the court noted stated that:

"at any step of the procedure, a decision may become final...“the ‘final’ step in the grievance procedure merely defines the last avenue to resolution of the grievance within the four corners of the CBA. As in *Appeal of Campton School District* and *Appeal of Hooksett School District*, review by the PELRB then follows implicitly.

Id. (citations omitted; emphasis added.) See also *In re Silverstein*, 163 N.H. 192 (2012)(citing to the *Appeal of State Employee's Association* ruling that PELRB review follows the completion of a “final” but not “binding” step in the grievance procedure).

After consideration of the order in the *White Mountains Educational Support Personnel* case, as well as applicable New Hampshire Supreme Court decisions relating to the interplay between PELRB jurisdiction and contractual disputes subject to statutory grievance procedure, we find the PELRB does not currently have jurisdiction over the Union's complaint. Given the substance of the claim at issue, a wage dispute based upon an alleged failure to pay firefighters

per CBA wage schedule, we cannot find that the CBA is not “susceptible of an interpretation that covers the dispute.” See *Appeal of Town of Bedford*, 142 N.H. 637, 640 (1998).

A presumption of arbitrability exists if the CBA contains an arbitration clause, but the court may conclude that the arbitration clause does not include a particular grievance if it determines with positive assurance that the CBA is not susceptible of an interpretation that covers the dispute. Furthermore, the principle that doubt should be resolved in favor of arbitration does not relieve a court of the responsibility of applying traditional principles of contract interpretation in an effort to ascertain the intention of the contracting parties.

Id.

Although in this case the last step is the Board of Selectmen, and not arbitration as was the situation in the *Bedford* case, the general principle at work is that the PELRB does not have jurisdiction when the underlying dispute is still subject to further steps in the contractual grievance procedure. In cases where the last step of the grievance procedure is “final and binding,” whether by an arbitration decision or by a decision by the public employer like a School Board or a Board of Selectmen, the PELRB will not have jurisdiction to adjudicate the dispute even after the completion of the grievance procedure. *In re Silverstein*, 163 N.H. 192 (2012). However, in cases like the one under consideration involving Goffstown, the PELRB will have jurisdiction following the completion of the grievance procedure because the last step, a decision by the Board of Selectmen,² is “final” but not “binding.” Accordingly, the Town’s request for dismissal is granted without prejudice to the Union’s right to maintain an unfair labor practice charge, if necessary, by filing a complaint within six months of the Board of Selectmen’s decision pursuant to Section 13.4 of Article 13 of the grievance procedure. We also find the Union is entitled to proceed at this juncture to the last step of the grievance procedure given its reliance, when it filed the instant complaint, upon the earlier *Goffstown* case (F-0143-7)

² It is the same result regardless of whether the decision in the last step of the grievance procedure issues by a Board of Selectmen, a School Board or an arbitrator.

and its concern that any delay in filing might have rendered an unfair labor practice complaint time barred pursuant to the RSA 273-A:6 six month limitation period.

So ordered.

Date: June 7, 2012

/s/ Charles S. Temple
Charles S. Temple, Esq., Chair

By unanimous vote of Chair Charles S. Temple, Esq. and Board Members Kevin E. Cash and James M. O'Mara, Jr.

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