



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Wayne Georgiana

v.

City of Manchester Fire Department

Case No. G-0199-1
Decision No. 2012-253

PRE-HEARING MEMORANDUM AND ORDER

Date of Conference: November 14, 2012

Appearances: Mr. Wayne Georgiana

Thomas I. Arnold, III, Esq. for the City of Manchester Fire
Department

Background:

On October 15, 2012 Wayne Georgiana filed an unfair labor practice complaint claiming that the City of Manchester Fire Department (City) violated RSA 273-A:5, I (g) and (h) when it, among other things, breached certain staffing provisions of an amended collective bargaining agreement (CBA) that allegedly went into effect on July 1, 2012. Mr. Georgiana claims that, as a result of the City's actions, he lost opportunities to work overtime for which he was eligible under the terms of the amended CBA. Mr. Georgiana requests that the PELRB find that the City committed an unfair labor practice and order the City to cease and desist from violating RSA 273-A:5, I (g) and (h) and to compensate him in the amount of \$831.00 for the loss of pay resulting from the City's actions.

The City denies the charges and claims, among other things, that the CBA provisions at

issue in this case did not go into effect on July 1, 2012 because the City and the Union entered into a verbal agreement which postponed the effective date in these provisions. The City filed two motions to dismiss (Motion to Dismiss I and Motion to Dismiss II) asserting that the PELRB lacks jurisdiction over this case because the CBA contains a grievance procedure which culminates in final and binding arbitration and which Mr. Georgiana utilized to resolve his grievance and because the grievance and the ULP complaint encompass the same issues. The City also argues that Mr. Georgiana lacks standing to pursue the claims arising from the CBA because the CBA at issue is a contract between the City and the Union and not between the City and Mr. Georgiana. The City requests that the PELRB dismiss or deny the complaint.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the PELRB has jurisdiction over Mr. Georgiana's claims.
2. If the PELRB has jurisdiction over the claims, whether the City violated RSA 273-A:5, I (g) and/or (h) as charged by Mr. Georgiana.

WITNESSES and EXHIBITS:

As outlined in the parties' Joint Pre-Hearing Worksheet,¹ Both parties reserve the right to amend their lists of witnesses and 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 witnesses and exhibits appearing on their respective lists will be available at the hearing. The requirement that the parties file copies of proposed exhibits prior to the date of adjudicatory hearing is suspended. The parties shall not file, either electronically or via mail, proposed exhibits prior to the day of hearing. The parties shall pre-mark each exhibit and bring an original and five (5) copies of each exhibit to the hearing.

¹ The parties filed a Joint Pre-Hearing Worksheet on November 9, 2012.

DECISION

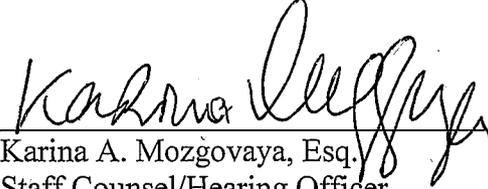
1. "Parties" means Mr. Georgiana, the City or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. The City filed a Motion to Dismiss I on November 9, 2012 and Motion to Dismiss II on November 13, 2012. Mr. Georgiana filed an objection to the Motion to Dismiss II but has not yet filed an objection to the Motion to Dismiss I. At the pre-hearing conference, Mr. Georgiana indicated that he intends to file an objection to the City's Motion to Dismiss I within next two days. Accordingly, given the proximity of the date of adjudicative hearing, an objection to the Motion to Dismiss I, if any, shall be filed no later than **November 19, 2012**. See Pub 203.04 (d).
3. The parties shall file their final witness and exhibit lists and a statement of stipulated facts no later than **November 19, 2012**.
4. The parties shall pre-mark exhibits by placing identifying markers in the upper right corner of each exhibit, if possible. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

HEARING

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **November 27, 2012, at 9:00 a.m.** at the offices of the PELRB in Concord. The time set aside for this hearing is 4 hours.

So ordered.

November 14, 2012


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

Distribution:
Mr. Wayne Georgiana
Thomas I. Arnold, III, Esq.