



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Wayne Georgiana

v.

City of Manchester Fire Department

Case No. G-0199-1
Decision No. 2012-257

Order on Motion to Dismiss

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)(to fail to comply with this chapter or any rule adopted under this chapter) and (h)(to breach a collective bargaining agreement) when it allegedly violated certain staffing provisions of the collective bargaining agreement (the "CBA") applicable to bargaining unit employees like Mr. Georgiana. Mr. Georgiana claims that as a result he was improperly denied or lost opportunities to work overtime. He 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 violation of the CBA.

The City denies the charges and has filed two motions to dismiss, claiming that the PELRB lacks jurisdiction over the complaint because the instant dispute is covered by the CBA and is subject to final and binding arbitration (First Motion to Dismiss) and also that Mr. Georgiana lacks standing to maintain the complaint (Second Motion to Dismiss).

Article 27 of the CBA sets forth the grievance procedure¹ (appended to the City's First Motion to Dismiss) under which a grievance can be presented to the Fire Chief per Article 27.2 and then to the Pre-Arbitration Board. After that, the Union may proceed to final and binding arbitration if it "determines that the grievance is meritorious." If the Union fails to proceed to arbitration within the time limits specified "the grievance shall be deemed abandoned and no further action shall be taken with respect to such grievance." In the present case Mr. Georgiana presented a grievance but the Union declined to bring his grievance to arbitration. Mr. Georgiana then filed the current complaint, requesting that the PELRB decide whether he was improperly denied additional hours of work in violation of the CBA.

Discussion:

The grievance procedure language contained in Article 27 of the CBA is the product of collective bargaining between the Union and the City. As such, it is binding upon bargaining unit employees like Mr. Georgiana. See *Appeal of Berlin Board of Education*, 120 N.H. 226, 230 (1980)(grievance language is binding on public employees and the public employer). The last available review (arbitration) of a grievance under Article 27 is "final and binding." The PELRB lacks jurisdiction to interpret a collective bargaining agreement and decide disputes which the CBA covers when the final step of the parties' grievance procedure is "final and binding." See *Appeal of Silverstein*, 163 N.H. 192, 196 (2012)("[a]bsent some indication that the legislature intended the PELRB to have the power to conduct a *de novo* evidentiary hearing regardless of whether the CBA contains a final and binding grievance process, we will honor the plain language of the parties' agreement") and *Appeal of the City of Manchester*, 153 N.H.289, 293 (2006).

¹ All collective bargaining agreements are required to have a grievance procedure per RSA 273-A:4.

As reflected by Article 27, the Union and the City have agreed that grievances shall be ultimately adjudicated, if at all, through a final and binding process (arbitration) that is external to PELRB hearing/adjudicatory procedures. The PELRB's lack of jurisdiction to interpret a CBA and decide contract disputes when the CBA grievance process contains a final and binding process (like arbitration) is not limited to those cases where the grievance is actually submitted or advanced to the final and binding process (a school board hearing in *Silverstein*, and arbitration in this case). The CBA is binding upon Mr. Georgiana, and he has no independent right under the CBA to obtain PELRB adjudication of his grievance in the event the Union does not advance it to final and binding arbitration, just as the Union does not have such a right if it elects not to advance a grievance to arbitration.

Decision:

The PELRB lacks jurisdiction over Mr. Georgiana's complaint and therefore the City's First Motion to Dismiss is granted. The City's Second Motion to Dismiss is moot. The adjudicatory hearing currently scheduled for November 27, 2012 is cancelled. Case dismissed.

So ordered.

November 26, 2012.



Charles S. Temple, Esq., Chair

By unanimous vote of Chair Charles S. Temple, Esq. and Board Members Kevin E. Cash and Carol M. Granfield.

Distribution:

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