



**State of New Hampshire**  
**Public Employee Labor Relations Board**

**AFSCME Council 93, Local 1801, Derry Administrative Support Staff**

**v.**

**Town of Derry**

**Case No. G-0052-7**  
**Decision No. 2018-215**

**Pre-Hearing Memorandum and Order**

**Date of Conference:** December 12, 2018

**Appearances:** Meghan Ventrella, Esq., for the Complainant

Anna Cole, Esq., for the Respondent

**Background:**

On November 13, 2018, the AFSCME Council 93, Local 1801, Derry Administrative Support Staff (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act alleging that the Town of Derry (Town) had violated RSA 273-A:3 and RSA 273-A:5, I (a), (b), (e), (g), and (h) when it eliminated Human Services (HS) Department containing one (currently vacant) bargaining unit position and outsourced human services functions to an outside contractor. The Union argues, among other things, that the Town was obligated to bargain over the decision to outsource bargaining unit work and over the impact of this decision on terms and conditions of employment prior to implementing this decision. The Union claims that the Town's actions constitute (1) a unilateral change in terms and conditions of employment, (2) a breach of its duty to negotiate in good faith, (3) a breach of the Recognition clause of the

parties' collective bargaining agreement (CBA), and (4) an interference with the Union's and employees' statutory rights. The Union requests that the PELRB (1) find that the Town violated RSA 273-A:3 and 273-A:5, I (a), (b), (e), (g), and (h); (2) order the Town to cease and desist from dominating and interference with the Union's rights; (3) order the Town to restore positions that were eliminated; (4) order the Town to bargain with the Union prior to making any changes in working conditions of bargaining unit positions, including any outsourcing of bargaining unit work; (5) order the Town to publicly post the PELRB's finding; and (6) order the Town to make the Union whole for all costs and expenses incurred to pursue the prohibited practice charge.

The Town denies the charges and asserts, among other things, that the parties' CBA, Article VII, expressly reserves to the Town the right to subcontract, within its sole discretion; and that the Union waived its right to bargain over the subcontracting decisions. The Town argues that the Union's claim is an attempt to undermine the explicit terms of the parties' CBA. The Town requests that the PELRB deny the remedies requested by the Union, find that the Town has not committed an unfair labor practice by subcontracting its Human Services Department, and require the Union to reimburse the Town for the attorneys' fees incurred in responding to this complaint.

#### Issues for Determination by the Board

Whether the Town violated RSA 273-A:3 and 273-A:5, I (a), (b), (e), (g), and/or (h) as charged by the Union.

#### Witnesses and Exhibits

As outlined in the Joint Pre-Hearing Worksheet. Both parties reserve the right to amend their lists of witnesses and exhibits in conformity with Pub 203.01 and this order.

### Decision

1. "Parties" means the Union, the Town or their counsel/representative appearing in the case. The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. At the pre-hearing conference, the parties discussed the possibility of submitting this case on stipulated facts, joint exhibits, and briefs. As discussed at the conference, the deadline to file a joint request to submit this case for decision on stipulated facts, joint exhibits, and briefs is **January 23, 2019**. Any such request shall contain a proposed schedule for submission of joint exhibits, stipulated facts, opening briefs, and reply briefs, if any.
3. The parties shall exchange final lists of witnesses and exhibits no later than 10 days prior to the date of hearing. 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.
4. The parties shall file with the PELRB final lists of witnesses and exhibits no later than 7 days prior to the date of hearing. All non-joint exhibits on the lists shall be pre-marked as either "ID" (if objected to) or "Full by Agreement."
5. The parties shall file a final statement of stipulated facts no later than 7 days prior to the date of hearing.
6. The requirement that the parties file copies of proposed hearing exhibits prior to the date of 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 by placing identifying markers in the upper right corner of each exhibit, if possible, and

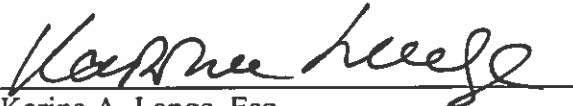
bring an original and five copies of each exhibit to the hearing. To facilitate access to a particular exhibit, the parties shall use tabs to separate exhibits.

Hearing

Unless otherwise ordered as a result of the filing of any subsequent motion, the adjudicatory hearing in this case will be held on **February 7, 2019, at 8:30 a.m.** at the offices of the PELRB in Concord. 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 10 days prior to the date of hearing.

So ordered.

Date: 12/12/2018

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

Distribution: Meghan Ventrella, Esq.  
Anna Cole, Esq.