



State of New Hampshire
Public Employee Labor Relations Board

Nashua Fire Fighters Association, IAFF Local 789

v.

City of Nashua

Case No. G-0122-7
Decision No. 2019-191

Pre-Hearing Memorandum and Order

Date of Conference: August 27, 2019

Appearances: Donna Soucy, Esq., for the Complainant
Dorothy Clarke, Esq., for the Respondent

Background:

On June 26, 2019, the Nashua Fire Fighters Association, IAFF Local 789 (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the City of Nashua (City) had violated RSA 273-A:5, I (e) and (h) when it unilaterally changed the method of calculating and processing the military duty pay under Article 28 of the collective bargaining agreement (CBA). The Union claims, among other things, that:

(1) Under Article 28 of the CBA, the City is required to pay an employee, called to serve with the National Guard or Armed Forces Reserves, the difference between this pay for such service and the amount of straight time earnings lost by reason of such service "based on the employee's regular straight time rate and schedule;"

(2) For more than ten years, the employees has provided to the City their schedule for military leave and the amount of pay *anticipated* and the City would subtract their military earnings from the regular weekly paycheck;

(3) In the previous years no employee lost pay for service in the military and the City pay was never delayed;

(4) The City unilaterally changed its method of calculating military duty pay in January of 2019;

(5) The new method is based upon a 7-day work week, while the actual schedule worked by bargaining unit members is a 24-hours schedule which is averaged out over 8 weeks; and

(6) As a result of the City's unilateral change, the employees experience delay in payment of wages and are not being compensated for the amount of straight time earnings lost due to military service but, instead, have wages deducted for days they were on military leave but were not regularly scheduled to work.

The Union also asserts that it grieved the new method of calculating the military duty pay and that, on April 26, 2019, the Board of Fire Commissioners denied the Union's grievance. The Union did not seek arbitration of the grievance. The Union requests that the PELRB (1) find that the City committed an unfair labor practice in violation of RSA 273-A:5, I (e) and (h); (2) order the City to cease and desist from calculating and processing military duty pay contrary to the terms of the CBA Article 28, to make whole bargaining unit members who suffered financially from the new method, and to post the PELRB decision in the places of employment of bargaining unit employees; and (3) award attorney's fees to the Union.

The City denies the charges and asserts, among other things, that the PELRB lacks jurisdiction over the Union's complaint because the parties' CBA provides for final and binding arbitration and the Union's unfair labor practice claim relates to interpretation of contract language and is substantially the same as its grievance claim. The City also claims that the change in method of processing military pay was supported by clear language in the CBA and was within the City's management rights. The City asserts, among other things, that, although in the past it has made payment under Article 28 based on *anticipated* military pay, under the clear language of Article 28, it is not obligated to make military duty payments until after "the

showing of satisfactory evidence of the amount of pay received for such service.” The City also alleges that clear language of Article 28 requires only that the City pay the difference lost during a “once-per-year, up to 17 consecutive days, annual training tour” and that, based on the contractual schedule, the employees work on average 42 hours per week over the 8 weeks and are paid on a weekly basis (42 hours per week), irrespective of the number of regular hours worked. The City requests that the PELRB dismiss the Union’s complaint, deny that the City has committed an unfair labor practice, and deny the Union’s request for attorney’s fees.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Union’s complaint.
2. Whether the City violated RSA 273-A:5, I (e) 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.

Decision

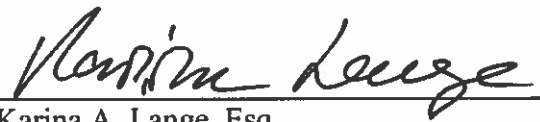
1. “Parties” means the Union, the City or their counsel/representative appearing in the case.
The parties shall simultaneously copy each other electronically on all filings submitted in these proceedings.
2. As discussed at the pre-hearing conference, on or before August 30, 2019, the parties shall submit a joint list of at least 4 proposed October, 2019 hearing dates. A new hearing date shall be established by a subsequent notice. See PELRB Decision No. 2019-172 (granting motion to continue).
3. The City shall file its motion to dismiss, if any, on or before **September 3, 2019**. See Admin. R. Pub 201.01 (j). See also Admin. R. Pub 203.04 (a).

4. The time set aside for the 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.
5. The parties shall exchange and file with the PELRB final lists of witnesses and exhibits and a statement of stipulated facts 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.
6. The requirement that the parties file copies of proposed 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.

So ordered.

Date:

8/27/2019


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

Distribution: Donna Soucy, Esq.
Steven A. Bolton, Esq.
Dorothy Clarke, Esq.