



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

**AFSCME Local 3657**

**v.**

**Town of Pelham**

**Case No. G-0119-6**  
**Decision No. 2020-034**

Pre-Hearing Memorandum and Order

Date of Conference: February 10, 2020

Appearances: Corey F. Williams, Esq., for the Complainant  
Eric A. Maher, Esq., for the Respondent

Background:

On December 20, 2019, AFSCME Local 3657 (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act asserting that the Town of Pelham (Town) had violated RSA 273-A:5, I (a), (b), (d), (e), (g), (h), and (i) when it breached the parties' contractual (CBA) grievance procedure. The Union alleges, among other things, that: (1) the Police Chief heard and denied a sick leave related grievance at Step 1 of the grievance procedure; (2) after the Union appealed the Chief's decision, the Town Administrator refused to "exercise jurisdiction" over the grievance at Step 2 claiming that the grievance was untimely; (3) when the Union attempted to appeal the Town Administrator's decision to the Board of Selectmen (BOS) (Step 3), the Town Administrator filed a motion to dismiss with the BOS; (4) the BOS conducted a hearing on the motion to dismiss and not on the underlying grievance; (5) a

Union representative attended this hearing as an observer, and not as a participant, and put the Town on notice that the motion to dismiss was in violation of the CBA; (6) the BOS granted the motion to dismiss the grievance; and (7) the Town committed an unfair labor practice when it unilaterally created an additional step (motion to dismiss) in the grievance procedure. The Union requests, among other things, that the PELRB (1) find that the Town violated RSA 273-A:5, I (a), (b), (d), (e), (g), (h), and (i); (2) order the Town to cease and desist from violating the CBA; (3) order the Town to publicly post the PELRB findings for 30 days; and (4) order the Town to make the Union whole for all costs and expenses incurred to pursue the prohibited practice charge.

The Town denies the charge and asserts, among other things, that: (1) the CBA states that the “failure to file a grievance or any step in the grievance process within the specified time frames shall be deemed a waiver of future appeal of the decision and will be considered acceptance of the decision rendered”; (2) the subject grievance was dismissed because the grievant failed to comply with the grievance procedure deadlines; (3) the motion to dismiss was not an additional step in the grievance procedure but rather a necessary first step to determine whether the grievance was properly before the BOS; (4) the Union representative attended the BOS hearing and chose not to participate; and (5) the PELRB does not have jurisdiction over the breach of the CBA claim because the CBA provides for final and binding arbitration and the Union failed to “exhaust administrative remedies.” The Town requests that the PELRB dismiss the complaint.

#### Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Union’s claims.
2. Whether the Town violated RSA 273-A:5, I (a), (b), (d), (e), (g), (h), and/or (i) as charged by the Union.

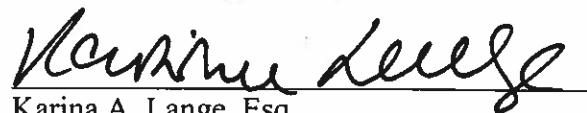
Decision

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. On February 7, 2020, the Union filed a motion to amend the complaint claiming that the parties have resolved two out of three claims set forth in the complaint. The Town does not object to this motion. The Union's motion to amend is granted. See Admin. R. Pub 201.04. As discussed at the pre-hearing conference, the Union shall file an amended complaint on or before **February 12, 2020**. An amended answer, if any, shall be filed on or before **February 14, 2020**.
3. On February 7, 2020, the Union filed an assented to request to submit this case for decision on stipulated facts, exhibits, and briefs. The Union's request is granted. As discussed at the pre-hearing conference, the parties shall file a Statement of Stipulated Facts, Joint Exhibits, and Opening Briefs on or before **February 28, 2020**. Reply Briefs, if any, shall be filed no later than **March 6, 2020**.

So ordered.

Date:

2/10/2020



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

Distribution: Corey F. Williams, Esq.  
Eric A. Maher, Esq.