



State of New Hampshire
Public Employee Labor Relations Board

**Londonderry Administrative Employees Association,
Affiliated with AFSCME Council 93
(Public Safety Administrative Employees)**

v.

Town of Londonderry

**Case No. G-0022-8
Decision No. 2022-080**

Pre-Hearing Memorandum and Order

Date of Conference: May 24, 2022

Appearances: Justin Murphy, Esq., for the Complainant
Michael D. Ramsdell, Esq., for the Respondent

Background:

On April 18, 2022, the Londonderry Administrative Employees Association, Affiliated with AFSCME Council 93 (Association) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Town of Londonderry (Town) claiming that the Town violated RSA 273-A:5, I (a) ("To restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter"), (e) ("To refuse to negotiate in good faith with the exclusive representative of a bargaining unit..."), and (h) ("To breach a collective bargaining agreement").¹ The Association alleges as follows: (1) in 2020, the Town unilaterally adopted a

¹ On May 20, 2022, the Association filed a motion to amend its complaint seeking to withdraw its claim that the Town violated subsection (h) of the RSA 273-A:5, I. See Decision section below.

"Temporary Leave Policy" (Policy) which incorporated the provisions of the Families First Coronavirus Response Act (FFCRA), including paid time off for Covid-19 related absence; (2) upon expiration of the FFCRA, the Town unilaterally extended its Policy through May 31, 2021; (3) on January 11, 2022, the Town notified the Association that vaccinated employees would be paid time off when they were required to self-quarantine while unvaccinated employees who were required to self-quarantine would have to use their accrued sick leave; (4) the Town refused to bargain over this change in working conditions; and (5) this unilateral change in terms and conditions of employment constitutes an unfair labor practice. The Association requests that the PELRB (1) find that the Town violated RSA 273-A, I; (2) order the Town to negotiate in good faith with the Association in a timely manner; (3) order the Town to credit all accrued leave used by employees as a result of this unilateral policy implementation; (4) order the Town to publicly post the board's findings for at least 30 days; and (5) order the Town to make the Association whole for all costs and expenses incurred to pursue this prohibited practice charge.

The Town denies the charges. The Town asserts as follows: (1) the adoption of the Policy was not a change in working conditions subject to collective bargaining; (2) this Policy was in effect since at least August, 2022; (3) only one bargaining unit employee had to utilize the accrued leave to cover a quarantine-related absence under this Policy; (4) the Policy provided all employees an incentive to receive a COVID-19 vaccine in the form of an additional benefit – additional paid leave if the vaccinated employee missed work due to a COVID-19 related absence; (3) the Policy did not disadvantage or otherwise negatively impact any employee; and (4) the policy expired in March of 2022. The Town also claims that, under *In re Silverstein*, 163 N.H. 192 (2012) and other cases, the PELRB lacks jurisdiction over the Association's complaint because the parties' collective

bargaining agreement provides for a final and binding arbitration. The Town filed a motion to dismiss the complaint.

Issues for Determination by the Board

1. Whether the PELRB has jurisdiction over the Association's RSA 273-A:5, I (a) and (e) claims.
2. Whether the Town violated RSA 273-A:5, I (a) and/or (e) as charged by the Association.

Decision

1. "Parties" means the Association, 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 May 20, 2022, the Association filed a motion to amend its complaint seeking to withdraw its claim that the Town violated subsection (h) of the RSA 273-A:5, I. The Town doesn't object to this motion. The Association's motion to amend is granted. See Admin. R. Pub 201.04 (b). The deadline to file an amended answer, if any, is **May 31, 2022**.
3. At the pre-hearing conference, the Town withdrew its claim that the complaint was untimely under RSA 273-A:6, VII.
4. At the pre-hearing conference, the Association requested a leave for late filing of an objection to the Town's motion to dismiss the complaint. The Association's request is granted. The Association shall file an objection to the Town's motion to dismiss on or before **May 27, 2022**.
5. The parties agreed to submit this case on stipulated facts, exhibits, and briefs and provided a proposed filing schedule. Based on the parties' pleadings and the discussion at the pre-hearing conference, it does not appear at this time that there are any issues of relevant and

material fact in dispute in this case or that an evidentiary hearing is necessary. See Admin. R. Pub 201.06 (a) and Pub 203.05 (b). The parties' agreed upon request to submit this case on stipulated facts, exhibits, and briefs is granted and the proposed briefing schedule is approved. Accordingly, the June 7, 2022 hearing is cancelled.

6. This case shall proceed according to the following schedule:

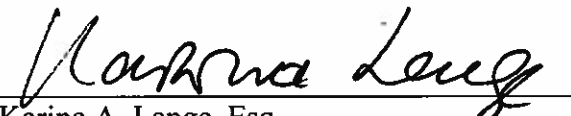
June 7, 2022: Deadline to file a statement of stipulated facts and exhibits. Any objection to any non-joint exhibit shall be addressed in the opening briefs.

June 21, 2022: Deadline to file opening briefs.

June 28, 2022: Deadline to file reply briefs, if any.

So ordered.

Date: 05/24/22


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

Distribution: Michael D. Ramsdell, Esq.
Justin Murphy, Esq.
Christopher Kilmer, Staff Representative