



State of New Hampshire
Public Employee Labor Relations Board

**AFSCME Council 93, Londonderry Administrative Employees Association
(Town Administrative Employees)**

v.

Town of Londonderry

**Case No. G-0182-6
Decision No. 2023-142**

Order

Pre-Hearing Memorandum and Order

Date of Conference: June 20, 2023

Appearances: Justin P. Murphy, Esq. for AFSCME Council 93 LAEA
Elizabeth A. Bailey, Esq. for Town of Londonderry

Background:

The union filed this unfair labor practice complaint on February 1, 2023, subsequently amended on April 10, 2023, claiming the town committed a variety of unfair labor practices in violation of RSA 273-A:5, I (a), (b), (c), (e), (g), and (i). This case involves the experience of the associate planner (a bargaining unit position) from approximately August of 2022 through January of 2023, when a town council vote to approve a reorganization of the planning department included the elimination of the associate planner position.

I. August through November 2, 2022, according to the union. The town manager had a number of meetings with the associate planner and others from late summer through October,

2022, about moving job duties of the zoning administrator from the building department to the planning department. By late October, the town manager had met, or asked to meet with, the associate planner to discuss additional compensation (\$2,500 stipend). On November 1, 2022, after the associate planner had contacted the union for assistance, the union emailed the town manager requesting the associate planner's current and proposed job descriptions and all compensation offers made to the associate planner. The union also referenced its right to impact bargain changes to job descriptions and assigned duties. The town manager replied the next day, stating he did not intend to significantly change the responsibilities of the associate planner, but would notify the union and impact bargain as necessary if he did so. He did not provide the requested information.

II. November 3, 2022, through January of 2023, according to the union. The union contends the town took a number of actions to retaliate against the associate planner for notifying the union about the events that transpired prior to November 1. These included "laying her off" and issuing a no trespass letter banning her from town hall and surrounding property. On January 19, 2023, the associate planner was placed on paid administrative leave 4 days prior to a town council meeting in which the council approved a reorganization of the planning and economic development department which eliminated the associate planner position. Additionally, during this time (and possibly continuously thereafter), the town improperly subcontracted the work previously performed by the associate planner in support of the zoning board to a law firm.

The union claims:

- 1) Improper direct dealing with a bargaining unit employee over terms and conditions of employment and a violation of the town's obligation to recognize and negotiate with the union, in violation of RSA 273-A:5, I (a), (b), (e), and (g);
- 2) Failure to provide advanced notice and ability to bargain prior to the unilateral change of duties of the associate planner in violation of RSA 273-A:5, I (e) and (g);

3) Failure to provide the information the union requested on November 1 in violation of RSA 273-A:5, I (b), (e), and (g);

4) Failure to provide advance notice and opportunity to bargain over subcontracting associate planner work to a law firm in violation of RSA 273-A:5, I (b), (c), (e), (g), and (i); and

5) Retaliating against the associate planner and "laying her off" in violation of RSA 273-A:5, I (a) and (c).

The union requests that the PELRB find unfair practices as charged and as relief order the town to:

- A. Cease dominating and interfering with the administration of the union;
- B. Recognize the union as the bargaining unit representative;
- C. Cease dealing directly with unit employees instead of with the union;
- D. Cease retaliating and discriminating in the terms and conditions of employment of employees who exercise their right to union representation;
- E. Negotiate with the union in a timely manner;
- F. Post the PELRB's decision for at least 30 business days;
- G. Reinstate the associate planner position and impact bargain all matters that arise from the adopted reorganizational plan prior to implementation; and
- H. Make the union whole for costs and expenses it has incurred;

The town denies the charges and requests that the PELRB assess attorney fees and costs against the union. The town asserts the union has failed to state a claim and cannot prove as a matter of fact or law that the town violated any of the RSA 273-A:I sub-sections cited by the union. The town has also raised a number of equitable defenses (estoppel, waiver, laches, unclean hands) and the RSA 273-A:6, VII, 6 month limitation period. The town further states that the union's claims and requests for relief are moot, particularly the request for reinstatement

of the associate planner, that the town has acted within its management rights, and that the union has not exhausted all administrative remedies.

According to the town's narrative, mostly provided at the pre-hearing conference, the town manager has been employed by the town since 2018, and he assumed the town manager position in early 2022. During 2022, he reviewed different departments and recommended the town council take action to change existing department structures several times in addition to the proposed reorganization of the planning department which resulted in the elimination of the associate planner position. By the time the union contacted him on November 1 with its request for information he had decided not to pursue changes to the associate planner's job description, and instead shifted his attention to a reorganization plan which ultimately resulted in a Planning and Economic Development Department without an associate planner position, approved by town council on or about January 23, 2023. The town manager maintains he never received any follow up requests to the union's November 1 request for information and believed the matter was resolved.

The town also described a situation in the beginning of December involving the provision of conflicting variance estimates to a developer by the zoning administrator/building inspector and the associate planner. This prompted the developer to complain to the town manager, who in turn advised the associate planner that a determination of the number of variances a project might require was the zoning administrator/building inspector's responsibility, and she should not involve herself in such matters. There were further communications and discussions between the town manager and the associate planner to follow up and clarify, as the associate planner believed that she had been silenced and could not discuss certain zoning board matters with anyone. At the next zoning board meeting, held on or about December 21, 2022, the associate

planner attended but did not perform her usual duties (advising the zoning board on process, for example). Subsequently, an attorney from the town's law firm provided the support previously provided by the associate planner at the zoning board's next meeting in January of 2023. The duration of this support is to be determined. The town says the no trespass letter was not retaliatory but was justified given the town manager's concerns following the associate planner's visit to town offices to retrieve personal property after her position was eliminated.

Issues for Determination by the Board

1. Whether the town improperly discussed terms and conditions of employment with the associate planner, including changes in job responsibilities and compensation, and thereby engaged in improper direct dealing with a bargaining unit employee and violated the union's exclusive right to represent the bargaining unit.
2. Whether the town committed an unfair labor practice when it failed to provide a response to the union's November 1, 2022, demand for information, even in the absence of any follow up requests by the union.
3. Whether the town violated its duty to bargain and otherwise committed unfair labor practices as charged because of the manner in which it reorganized the Planning and Economic Development Department and eliminated the associate planner position.
4. Whether the town's elimination of the associate planner position was illegal retaliation against the associate planner and therefore an unfair labor practice as charged by the union.
5. Whether the town illegally sub-contracted bargaining unit work to the town's law firm without providing notice or an opportunity to bargain to the union and therefore committed an unfair labor practice as charged by the union.
6. Whether the PELRB has authority to award attorney fees and costs as requested by the town and, if so, whether the request is warranted on the facts of this case.

Decision

1. Filing procedures. "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. Stipulations. The final stipulation of uncontested facts is due on **August 18, 2023**. As discussed at the pre-hearing conference, the request for 16 hours of hearing is excessive,

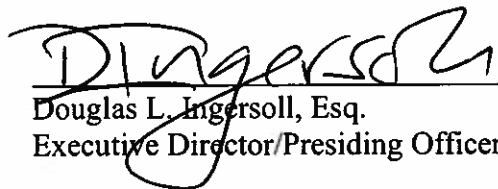
even if made as a precautionary matter. Counsel should be able to recite nearly all relevant facts in their final stipulation of uncontested facts, thereby reducing the need for extensive testimony on uncontested matters.

3. Witnesses and Exhibits. Final witness and exhibit lists are due on **August 18, 2023**. The parties shall confer as necessary so the exhibit lists indicate whether an exhibit is full exhibit by agreement (Full) or will be marked for identification only (ID). The parties shall mark all exhibits prior to hearing in the upper right-hand corner as Joint, Union, or Town. Joint and Union exhibits shall be marked numerically, Town exhibits alphabetically. Exhibits marked for identification only shall be marked, for example, as "Union Ex.1 (ID)." Exhibits a party is offering without objection shall be marked as, for example, "Town Ex. A." The parties shall not file, either electronically or via mail, exhibits prior to the day of hearing. On the day of hearing, each party shall bring an original and five copies of their exhibits, organized in notebooks with tabs separating the exhibits.

4. Hearing. A hearing will be held in September on a date to be determined. On or before **July 20, 2023**, the parties shall notify the PELRB of all dates they are both available for hearing during the two week period beginning September 18, 2023. Five hours is being set aside for hearing in anticipation of a well organized and comprehensive stipulation of facts and an effective and efficient presentation of any witness testimony.

Date:

6/26/2023


Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

Distribution: Justin P. Murphy, Esq.
Elizabeth A. Bailey, Esq.