



State of New Hampshire
Public Employee Labor Relations Board

State Employees Association of NH, SEIU Local 1984

v.

Town of Littleton

Case No. G-0171-2

Decision No. 2023-273

Pre-Hearing Memorandum and Order

Date of Conference: October 31, 2023

Appearances: John S. Krupski, Esq., for the Complainant

Peter C. Phillips, Esq., for the Respondent

Background:

On September 29, 2023, the State Employees' Association of New Hampshire, SEIU Local 1984 (Union) filed an unfair labor practice complaint under the Public Employee Labor Relations Act against the Town of Littleton claiming that it violated RSA 273-A:5, I (h) ("To breach a collective bargaining agreement") and (i) ("To make any law or regulation, or to adopt any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement ...") when it enforced an arbitrator's decision which exceeded the arbitrator's authority, thereby violating the grievant's constitutional and due process rights. The Union alleges that: (1) a bargaining unit employee (a police officer) was investigated for alleged violations of RSA 265-A:2 (driving under the influence) and RSA 264:25 (conduct after an accident); (2) based on the investigative report, the Deputy Chief recommended a three-week suspension, removal from the field training officer position, and remedial training; (3) the Chief reiterated the Deputy Chief's

allegations but increased the recommendation from a suspension to a termination based upon his own finding of untruthfulness; (4) the Town Manager terminated the subject police officer's employment; (5) the Union grieved the termination; (6) the parties' went through the final and binding arbitration as part of the contractual grievance process; and (7) the arbitrator found no evidence of untruthfulness but concluded that the Town had just cause to terminate the employee "for operating his vehicle while under the influence of liquor." The Union claims that the arbitrator exceeded his authority, and his decision violated a strong and dominant policy that an individual is innocent of a crime until proven guilty beyond a reasonable doubt. The Union argues that because the employee was not convicted of a violation of RSA 265-A:2, it cannot serve as basis of, or just cause for, a termination. The Union requests that the PELRB find that the Town has committed an unfair labor practice; find that the arbitrator exceeded his authority, and his decision violated a strong and dominant public policy; and order the Town to reinstate the employee.

The Town denies the charges and claims that the complaint fails to state a claim upon which relief can be granted. The Town also argues that the parties agreed to final and binding arbitration and the arbitrator's decision was within the scope of his authority as granted by the parties. The Town requests that the PELRB dismiss the complaint and deny all requests for relief, and order the Union to reimburse the Town for all of its costs and attorney's fees related to this case.

Issues for Determination by the Board

1. Whether the arbitrator's award violates a strong and dominant public policy. See *Appeal of Professional Fire Fighters of Hudson*, IAFF Local 3154, 167 N.H. 46 (2014). See also *Appeal of Merrimack County*, 156 N.H. 35 (2007).
2. Whether the arbitrator otherwise exceeded his authority.
3. Whether the Town violated of RSA 273-A:5, I (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. The parties agreed to submit this case for decision on stipulated facts, exhibits, and briefs and provided a proposed filing schedule. Based upon 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 November 21, 2023 hearing is cancelled.
3. This case shall proceed according to the following schedule:

November 30, 2023: Deadline to file a statement of stipulated facts and exhibits. Any objection to any stipulation or non-joint exhibit, if any, shall be addressed in the opening briefs.

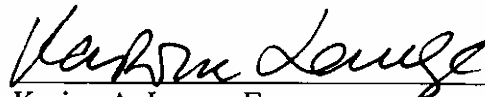
January 2, 2024: Deadline to file opening briefs.

January 16, 2024: Deadline to file reply briefs, if any.

So ordered.

Date:

10/31/2023



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

Distribution: John S. Krupski, Esq.
Peter C. Phillips, Esq.