

**Professional Fire Fighters Association of Rye, IAFF Local 4411 v. Town of Rye**, Decision No. 2014-054 (Case No. G-0212-1).

**Background:** The Union filed an unfair labor practice complaint alleging that the Town violated RSA 273-A:5, I (e) and (h) by improperly refusing to arbitrate a grievance about the Fire Chief's decision not to fill certain shift vacancies. The Town countered that the grievance was not arbitrable because, among other things, it involved the exercise of management rights that were not subject to the grievance procedure or arbitration. The Town also argued that the Union's claims were barred by the disposition of two prior and similar grievances.

**Decision:** The Hearing Officer found that under the "positive assurance" standard, the shift vacancy grievance was arbitrable as there was no contractual provision expressly excluding, or other forceful evidence of a purpose to exclude, a shift vacancy grievance from arbitration. The staffing/shift vacancy issue was a permissive and not a prohibited subject of bargaining under the Supreme Court's three-part test. Also, the fact that the Union did not pursue the 2012 grievance to arbitration did not result in a forfeiture of its right to proceed to arbitration in this case. The Union's decision not to pursue arbitration of the 2012 grievance did not constitute an agreement that such matters were not arbitrable. The same was true with respect to the previous 2013 grievance, where the parties reached an agreement which provided to the Union the relief it sought. By refusing to participate in arbitration, the Town breached a collective bargaining agreement in violation of RSA 273-A:5, I (h).

***Disclaimer: This summary is intended to provide a brief description of the issues in this case and the outcome. The summary is not a substitute for the decision, should not be relied upon in place of the decision, and should not be cited as controlling or relevant authority in PELRB proceedings or other proceedings.***