



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Seabrook

Complainant

v.

Local 1984, SEIU, SEA
Seabrook Employees Association

Respondent

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Case No. M-0591-36

Decision No. 2002-105

APPEARANCES

Representing the Town of Seabrook:

Robert Ciandella, Esq.

Representing Seabrook Employees Association:

Jeffrey Brown, Field Representative

Also appearing:

Russ Bailey, Seabrook Town Manager
Oliver Carter, Jr. Town of Seabrook
Cora E. Stockbridge, Seabrook Employee Association
David A. Currier, Seabrook Employees Association
Karen Knight, Town of Seabrook
Asa H. Knowles, Jr., Town of Seabrook

BACKGROUND

The Town of Seabrook (Town) filed unfair labor practice (ULP) charges on May 13, 2002 against the Seabrook Employees Association, SEA, S.E.I.U. Local 1984 (Union) alleging

violations of RSA 273-A: 5 II (b) and (f) resulting from the union's (1) attempting to arbitrate a non-arbitrable subject, namely selectmen's meeting times for grievance hearings, (2) refusing to meet at 4 p.m. for grievance hearings, and (3) illegal monitoring of selectmen's activities. The Union filed its answer on May 24, 2002. After rescheduling at the request of the parties, representatives of each side attended a pre-hearing conference on July 23, 2002, as memorialized in Decision No. 2002-085 dated July 26, 2002. This matter was heard before the PELRB on September 12, 2002 and February 13, 2003 after several intervening continuances. Post-hearing briefs were requested and filed March 12, 2003.

FINDINGS OF FACT

1. The Town of Seabrook employs personnel who work in its police, fire, water, sewer, recreation and highway departments and, thus, is a "public employer" within the meaning of RSA 273-A: 1 X.
2. The Seabrook Employees Association, SEA, S.E.I.U. Local 1984, is the certified bargaining agent for the following employees employed by the Town, to wit:

Clerks-Selectmen's Water Dept., Recreation Dept., and Asst. Appraiser's, Custodians-Town Office, Highway Dept., Water Dept., and Recreation Dept., Laborers & Equipment Operations-Highway Department and Water Department, Laborers & Equipment Operations-Highway Department and Water Department, Police Dispatchers, Secretary to Police Chief, Secretary to the Selectmen, Working foreman, Wastewater/water operator, Janitor, Equipment operator/CDL/laborer and clerk.

Amended certification M-0575 dated December 21, 2000, with original certification dated May 14, 1986.

3. The Town and the Union are parties to a collective bargaining agreement (CBA) for the period April 1, 1998 through March 31, 2002, and continuing for all pertinent times thereafter under *status quo* provisions as found at CBA Article 22. Article 10 of the CBA delineates a grievance procedure which concludes with final and binding arbitration. Pertinent provisions of the grievance procedure are:

GRIEVANCE PROCEDURE

- 10.1. The purpose of this procedure is to provide an orderly method for resolving grievances. A determined effort shall be made to settle any such differences at the lowest possible level in the grievance procedure.
- 10.2. For the purpose of this Agreement, a grievance is defined as those disputes involving the interpretation,

application or alleged violation of any provision of this Agreement. Grievances shall be processed in accordance with the following procedures within the stated time limits

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- 10.3.1. If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Department/Town's last answer.
- 10.3.2. If the Department/Town does not answer a grievance or an appeal thereof within the specified time limits, the Association may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step.
- 10.3.3. The time limit in each step may be extended by mutual agreement of the individuals involved in the step.

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- 10.4. Levels of Review:
 1. Employee's Supervisor
 2. Department Head
 3. Town Manager
 4. Board of Selectmen
 5. Arbitration

10.5. Step I:

- 10.5.1. Any employee having a grievance, or one designated member of a group having a grievance, should first take the grievance up with the supervisor, or at the level at which the decision was made giving rise to the grievance, who will attempt to resolve it. This oral review may be presented without the intervention of the exclusive representative, and until the grievance is reduced to writing the Association shall be excluded from the procedure if the employee so requests. However, any resolution of the grievance shall not be inconsistent with the terms of this Agreement.
- 10.5.2. If the effort at oral resolution has not been successful, the grievance shall be reduced to writing and pre-

mented to the first level of review within the ten (10) business day time limit.

10.5.3. The individual receiving the written grievance shall give a written decision within five (5) business days after such presentation.

10.6. Step II:

10.6.1. If the grievance is not settled in Step I and the employee wishes to appeal the grievance, it shall be referred in writing to the department head within five (5) business days after the answer in Step I. The department head, or his/her designee, shall discuss the grievance within five (5) business days with the employee and his/her representative at a time mutually agreeable to the parties.

10.6.2. The department head, or his/her designee, shall give his/her written decision within (5) business days following the meeting

10.7. Step III:

10.7.1. If the grievance is not settled in Step II and the employee desires to appeal, it shall be referred in writing to the town manager, or his/her designated representative, within five (5) business days after the department's answer in Step II. A meeting between the town manager and the employee and his/her representative shall be held at a time mutually agreeable to the parties, within five (5) business days of receipt of the Association's appeal.

10.7.2. The town manager or his/her representative, shall give his/her written decision within five (5) business days following the meeting.

10.8. Step IV:

10.8.1. If the grievance is not resolved in Step III and the employee desires to appeal, it shall be referred in writing to the board of selectmen within five (5) business days after the town manager's answer in Step III. Within five (5) days after receipt of a grievance, the board of selectmen shall meet with the grievant and his/her rep-

representative for the purpose of hearing the arguments of the parties involved.

10.8.2. Within ten (10) business days after said meeting, the chairman of the board of selectmen shall answer the grievance in writing.

10.9. Step V:

10.9.1. If the grievance is not settled in accordance with the foregoing procedure, the Association may refer the grievance to arbitration within (10) ten business days after receipt of the board of selectmen answer in Step IV. The parties shall attempt to agree upon an arbitrator within five (5) business days after receipt of notice of referral and in the event the parties are unable to agree upon an arbitrator within said five (5) day period, the parties shall immediately jointly request the Public Employee Labor Relations Board to submit a panel of five (5) arbitrators. Either party may reject one (1) entire panel. Both the Town and the Association shall have the right to strike two (2) names from the panel. One party shall strike the first name, the other party shall then strike a second name, the first party a third name, and the other party a fourth name, and the remaining person shall be the arbitrator. The order of striking shall be determined by a coin toss. The arbitrator shall be notified of his/her selection by a joint letter from the Town and the Association and a mutually agreeable meeting time will be arranged.

10.9.2. The arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. He/she shall only consider and make a decision with respect to the specific issues submitted, and shall have no authority to make a decision on any other issue not so submitted. In the event the arbitrator finds a violation of the terms of this Agreement, he/she shall fashion an appropriate remedy. The arbitrator shall submit in writing his/her decision within thirty (30) calendar days following the close of the hearing or the submission of briefs by parties, whichever is later, unless the parties agree to a written extension thereof. The decision shall be based solely upon his interpretation of the meaning or application of the express terms of this Agreement to the facts of the

grievance presented. A decision rendered consistent with the terms of this agreement shall be final and binding.

4. At the time this ULP was filed, the Town asserted that there were 22 union grievances¹ waiting to be heard by the Board of Selectmen at Step IV, CBA Article 10.8.1, which appears above. The Town further asserted that it had scheduled these 22 grievance matters to be heard at 4:00 p.m.² on business days because (1) the work schedule of two selectmen had changed, (2) other matters of Town business occupy the selectmen's time "during morning and earlier afternoon hours" and (3) the parties' CBA contains no requirement that Step IV grievances be "heard before 4:00 p.m. or at any other particular time." See ULP, para's. 2, 3, 4, 6 and 7, all (except para. 4) having been admitted in responsive pleadings. In addition, the Town claims that the Union has refused to meet at 4:00 p.m. on these 22 grievances and by doing so has violated 273-A: 5 (b) as well as the requirement to have and operate under a "workable grievance procedure" pursuant to RSA 273-A: 4. The last element of the ULP is the Town's claim, in paragraph 10, of illegal surveillance and monitoring of selectmen.
5. By way of answer, the Union has claimed that the Town has unilaterally changed a past practice of 17 years' duration by scheduling Step IV grievance hearings at 4:00 p.m. and that this change is responsible for the case backlog. Moreover, the Union claims that the Town has set hearing dates for some of the pending grievances, but not all of them. (Answer, para's. 4 and 8.) The Union also rejected the proposition that it had refused to meet with the Town, citing a meeting held on April 9, 2002 at 4:30 p.m., approximately a month before the ULP was filed. This was substantiated by a letter from Cora Stockbridge, chapter president, also dated April 9, 2002, in which she filed a "protest against meeting after normal working hours. It has been the practice for the past 17 years to conduct grievance hearings during normal working hours...." (Union Ex. No. 9.) She had filed a grievance on the same subject on March 28, 2002. (Union Ex. No. 2.)
6. On April 15, 2002, selectmen Karen Knight and Oliver Carter wrote a letter to SEA Representative Brian Mitchell (Jt. Ex. No. 3 and Union Ex. No. 10) about the Union's "Step IV grievance hearings should be during working hours" grievance (Union Ex. No. 2) which they denied. The letter said, *inter alia*, "The contract language does not say what time we should meet and we have... not violated any contract language. The idea of

¹ The Union's answer, para. 2, asserts there were 17 grievances pending at the time the ULP was filed.

² On March 11, 2000 [sic], the Union agreed to meet at 4:00 p.m. to process all grievances if the Town would agree to pay employees held over in order to attend these meetings on an overtime basis under the CBA. (Union Ex. No. 3). This was rejected by the Town Manager on March 21, 2002. (Union Ex. No. 4)

past practice is not relevant, as board of selectmen... change and their personal work schedules may not allow for a meeting during the day unless some type of emergency. It is not unusual for grievance meetings to be held after hours." On April 30, 2002, Mitchell proposed the name of three "Step V" arbitrators to then Town Manager Bailey. (Union Ex. No. 5.) This was followed by Mitchell's request for a list of arbitrators from the PELRB on May 21, 2002. (Union Ex. No. 6.) The Town filed the instant ULP on the following day.

7. E. Russell Bailey, who has since taken other employment, had been Town Manager for 10 years. He explained that the Town has a work force of 120 with 4 unions. He stated the selectmen usually meet weekly on Wednesday mornings or sometimes at 7:00 in the evening. Priority for daytime meetings is given to budget matters with department heads and welfare cases, primarily because of the nature of the employees involved. After the grievance backlog reached 23 cases, Knight and Oliver approached him and said this was impacting their work schedules, i.e., non-selectmen duties. After that, the Town offered to split Step IV grievance meeting times with the Union, some during working hours and some at 4:00 p.m. This was rejected. In April of 2002, the Union also offered to meet at 8:00 a.m., before the regular Wednesday selectmen's meeting to process Step IV grievances but this did not materialize.
8. Both then Town Manager Bailey and Stockbridge identified Stockbridge as the collector of information and observations noted on Joint Ex. No. 2, namely, 48 instances of when selectmen Knight and/or Carter were present at the Town Hall during "normal business hours," ranging from 8:45 a.m. to "after 4 p.m." To the extent these observations were made by Stockbridge, we find them to have been unobtrusive based on Bailey's testimony that she occupied a corner office facing the parking lot and from which she can view the front door from her desk.
9. Bailey identified Union Ex. No. 12, a log sheet of 20 regular meetings of the Board of Selectmen between January 2, 2002 and August 7, 2002. Thirteen of these meetings were before the Town filed its ULP on May 13, 2002; seven were after. All but two of these twenty meetings (5/1/02 and 6/12/02) commenced between 9:00 and 10:15 a.m. The minutes of each of the twenty meetings (Union Ex. No's. 12 A through 12 T) show time reserved for "non-public sessions" devoted to "personnel" or "personnel matters."³ Bailey also identified Union Ex. No. 15, the schedule of special meetings of the selectmen between January 8, 2002 and April 24, 2002. Sixteen special meetings were noted; five of them started at 4:00 p.m. or later. Seven of these sixteen meetings involved "interviews" and/or "personnel" matters and commenced before

³ We rely on the time stated in Union Ex. No. 12 over the time projected in Union Ex. No 13 because we consider the former to be historical in the sense of a record verses the latter which was a schedule of projected meetings.

4:00 p.m. The Town used none of the 29 (18 plus 11) "day" meetings referred to here to process Step IV hearings for this bargaining unit.

10. Selectman Oliver Carter explained how he and his wife run a family print shop and how the selectmen's agendas depend on the schedule he has and the one selectmen Knight has, inasmuch as the third selectman is retired. Carter, a third-term selectman, testified he could not handle all the other duties he has as a selectman if he were ordered to hold grievance hearings at a prescribed time. When asked about surveillance at the Town Hall (Joint Ex. No. 2) he said he felt it was like having someone "tell me when to work." Saying he was "flexible," Carter explained how he conducts budget hearings during the day, because they involve town employees and it "wouldn't be fair for department heads to have to come back at night...." Saying it was "hectic," he also finds time to do labor negotiations during the day. He reported the selectmen opposed town meeting approval of the CBA for this bargaining unit in 2001 because, unlike other unions, they had not agreed to a 10% health insurance co-pay plan. Carter said he would not "feel comfortable" with having a representative sit-in for him at Step IV grievance hearings. "When I schedule meetings, I schedule on what my personal life is because that's my livelihood." He likes a 4:00 p.m. starting time for grievances because, "I can give them the rest of the evening."
11. Karen Knight currently chairs the selectmen and is a full-time registered nurse. Under Bailey's administration she devoted 20 hours per week to town business. Now, with an interim manager, she spends 30-35 hours a week on those chores. She testified that the daytime hearing of Step IV grievances stopped in late 2001 or early 2002, long before and unrelated to Bailey's taking new employment. She stated her objection to being watched outside the town hall or to being "followed around."⁴ She felt being watched coming and going from the Town Hall was the equivalent of "stalking." She complained about the grievance load, saying, by comparison, the other [three] unions had two grievance hearings in five months. She was a proponent of splitting grievance hearings for this unit, half on the clock and half off, but the union rejected the concept. She knew the Union had offered 8:00 a.m. meetings on Wednesday mornings but the selectmen "could not work it into our schedules." When Knight first became a selectman, she acknowledged she used to attend Step IV grievance hearings during working hours "but my job was different then. This Board of Selectmen is not subject to the decisions of prior boards." She stated that the Town is not asserting a time bar on grievances waiting processing during the pendency of this case.
12. Asa Knowles has been a selectman for 13 years. He said he used to be able to solve grievances with the unions. All the Step IV hearings used to be during

⁴ Knight testified that she had filed a stalking complaint with the Chief of Police against Stockbridge but declined to ask for her arrest. She confirmed feeling "threatened" by seeing Stockbridge at the Town Hall.

the day; only the planning board met in the evening in those days. Knowles said the procedures for after-hours versus day Step IV grievance hearings changed when there were nine cases awaiting review by the selectmen. He asked Bailey why they were not consolidated for processing but received no answer. "When we got the new head of the Board [of Selectmen], we didn't have them [daytime grievance hearings] anymore." Knowles said, " I think it's wrong. Just as fast as they [the grievances] come, we should get rid of them." "When Karen Knight became head of the Board, that's when our problems started.... We have a meeting every Wednesday; we can get these grievances out of the way before and after our regular meetings." Knowles observed that a quorum of two selectmen can run the Step IV grievance reviews.

DECISION AND ORDER

By way of reprise, the parties summarized their respective perceptions of the issues when they filed post-hearing briefs. The Town identified two issues: "Does the Union have the authority to force the Town to submit to arbitration the time when the Seabrook Board of Selectmen will meet to hear a grievance?" and "Does the Union's spying on two members of the Board of Selectmen violate RSA 273-A:5 II (b) and (f)?" The Union identified three issues and formulated them differently, to wit: the allegation that the Union failed to meet with the Selectmen at 4:00 p.m. to hear grievances and that such refusal rendered the grievance procedure negotiated between the parties unworkable, the allegation that the Union's attempt to arbitrate the dispute associated with the 4:00 p.m. starting time interfered with the "Town's right to represent itself with its governing body," and the allegation that the Union engaged "in illegal surveillance of the Town's Selectmen." Given the commonality of the surveillance issue, we shall address it first.

There is no stated unfair labor practice of engaging in surveillance, be it from one side or the other. The "violation," if there be one, must be tied to a statutory reference. In this case, the Town asserted violations of RSA 273-A:5 II (b) and (f), respectively referring to coercion in the selection of grievance agents and breach of contract. ULP, para. 10. The alleged breach of contract results from Article 2.1 of the CBA which forbids employees from engaging in illegal activity or from withholding services to the Town. Brief, p. 14. The Town failed in its burden here because it did not show a change in productivity, a change in attendance at workstation or work site or any other measurable consequences leading to an independent conclusion that service had been withheld. As a matter of fact, the evidence as we received it shows that the Town was essentially unaware of the work-site observations until they were annotated to Bailey in Joint Ex. No. 2 dated February 12, 2002. As per Finding No. 8, there is no evidence that the alleged surveillance was any more than casual observations and annotations in the work place without consequences following into the private, non-governmental lives of members of the Board of Selectmen. The complained-of activities, which included engaging in observations and then recording them by unit member(s) at work, were passive, unobtrusive and inconsequential. Referring to this activity as "spying" only serves to be inflammatory and is without foundation.

The Town also failed in its attempt to show a violation of RSA 273-A:5 II (b) because it did not prove restraint in the public employer's selection of representatives to represent it at the Step IV grievance proceedings. Quite the contrary, Carter explained how he did not want to

delegate his role as Step IV grievance processor to anyone else (Finding No. 10) and Knight acknowledged she used to participate in Step IV hearings during the day but that her job was different then (Finding No. 11).

It was not until April 15, 2002, when the grievance backlog approached twenty cases, filed by the Union under the terms of the CBA, that Carter and Knight wrote the Union about their unwillingness or inability to process cases during working hours (Finding No's. 4 and 6) thus prompting a grievance over this refusal. This demonstrates that neither had been deterred from his or her Step IV responsibilities.

Notwithstanding the observation from Knowles, the third selectman, that Step IV hearings can and should be held during working hours, Carter and Knight persisted by only scheduling and conducting 4:00 p.m. hearing times for Step IV grievances once the backlog approached 23 cases. Finding No. 7. Whether the Union intended to remove one or both of them from the Step IV grievance process is unsubstantiated and unproved. The evidence is clear that no change in the composition of the Town's grievance representatives occurred or was forced on it as the result of the Union's complaints about moving Step IV grievance proceedings outside the normal workday of its bargaining unit members. The Town's ULP, as it pertains to surveillance and improper interference in the selection of grievance representatives, alleged violations under RSA 273-A: 5 II (b) and (f), is DISMISSED.

The remaining portions of the ULP, alleging a violation of RSA 273-A:5 II (b) associated with the Union's refusal to meet for 4:00 p.m. grievance meetings, is unfounded because the April 9, 2002 meeting predated both the filing of the ULP and the allegation that Union attempted to control, whether directly or through the arbitration process, the scheduling of the selectmen's meetings. The 4:00 p.m. issue is resolved by the April 9, 2002 meeting and that part of the ULP, as found at paragraphs 8 and 9 of the complaint, is DISMISSED. As for other 4:00 p.m. Step IV processing times, the Union objected to that hour as early as April 9, 2002 in a letter from Stockbridge to Knight. Union Ex. No. 9. Its reluctance to engage in additional 4:00 p.m. grievance hearings by the selectmen is consistent with not wanting to be accused by the Town of having acquiesced in this matter which, according to Union Ex. No. 9, involved a long-standing past practice of some seventeen years' duration. Thus, that portion of the ULP dealing with 4:00 p.m. starting times is DISMISSED.

A review of the grievance itself provides insight to its consequences had it been arbitrated. Both the Step IV grievance form (Union Ex. No. 2) and its request for a list of arbitrators (Union Ex. No. 6) are consistent in the characterization of the grievance. They state, respectively, that "the Selectmen have violated the contract and have specifically violated Article 10, grievance procedure, 10.8, Step IV, Selectmen's level in that they are refusing to meet with the Association during normal working hours as has been the practice for nearly 17 years" and "the Town violated a 17 year past practice by refusing to process grievances during working hours."

We find it difficult, indeed, to infer from this characterization of the grievance that the Union was attempting, in contravention of RSA 273-A:5 II (b) or (f), to control when the Selectmen would hold Step IV grievance hearings, other than that they should be "on the clock" consistent with "past practice." There is no evidence that the Union either wrested, or attempted

to wrest, control and scheduling of selectmen's meetings away from the selectmen. The record, on the other hand, shows an attempt to resolve, through the grievance and arbitration process, whether the Town had violated a contract provision, identified as Article 10.8,⁵ by refusing to process Step IV hearings during working hours.⁶ Given the parties' decision to define a "grievance" generally as "those disputes involving the interpretation, application or alleged violation of any provision of this agreement," in Article 10.2 of the CBA, the manner in which the Union elected to raise the issue here was within the contemplation of the contract and does not rise to the level of being violative of RSA 273-A:5 II (b) or (f). Because the selectmen chose to see the grievance as being controlling or intrusive on their prerogative neither means that it was nor that it constituted a ULP. Likewise, the steadfast refusal of Carter and Knight to participate in the Step IV grievance review process, noted above, was proof that the Union's actions were neither controlling nor intrusive.

Based on the foregoing, all remaining portions of the ULP dealing with the Union's alleged misconduct for filing the grievance on or about March 28, 2002 and the request for arbitration on or about May 2, 2002 are DISMISSED. The Town would have us believe that the issue advanced in the grievance was whether "the Union had the authority to force the Town to submit to arbitration the time when the...Selectmen will meet to hear a grievance." We cannot and do not reach that conclusion from having read Union Ex. No's. 2 and 6 which question whether the Town's/Selectmen's conduct complied with negotiated procedural timelines found in the CBA. This was within the prerogatives the Union and a legitimate way to address its questions about the interpretation and application of Article 10. Thus, we have dismissed the remaining portions of the ULP and, by doing so, reiterate that the Town has the authority to set the times and places for selectmen's meetings in accordance with its charter and statute, but it does not have the right to interfere with contractually negotiated rights and benefits, among which is the grievance procedure contained in the CBA.

Facts and figures provided to this Board in conjunction with this case, including materials supplied through pleadings, exhibits and arguments from the Town, do not paint a pretty picture for a "workable grievance procedure" as contemplated by RSA 273-A:4. By way of example, we refer to three instances. First, the selectmen, Carter and Knight, did not manifest their recalcitrance to hear Step IV grievances until the number of pending grievances for this bargaining unit was approximately twenty. Finding No's. 4, 6 and 7. Knight expressed her distaste and disapproval of the number of grievances coming from this particular bargaining unit when she compared its filing rate to the other three bargaining units in town. Finding No. 11. This plants the seed of suspicion that the selectmen's non-compliance with certain contractual time lines was in reaction to the increase in grievance filings.

Second, there is exhaustive documentary evidence (Finding No. 9), which shows 18 of 20 regular selectmen's meetings held between January 2 and August 7, 2002 commenced between 9:00 and 10:15 a.m. The minutes of all twenty of these meetings show time reserved for person-

⁵ Article 10.8 appears in Finding No. 3, above.

⁶ If a counter-claim or opposing ULP had been filed by the Union, there may well have been a finding that there was a breach of the time limits found in Article 10.8 of the CBA.

nel matters or non-public sessions, yet none of that reserved time was utilized to process the backlog of Step IV grievance reviews under consideration here. Union Ex. No's. 12A through 12T. Similarly, of the 16 special selectmen's meetings held between January 8 and April 24, 2002 (Union Ex. No. 15) only five started at 4:00 or later. Thus, of 18 regular and 11 special "day" meetings between the dates indicated, the selectmen used none of them to work off the increasing docket of grievance cases for this bargaining unit.

Third and finally, it appears from Finding No's. 7 and 11, that the Union, aware of the usual Wednesday morning meetings of the selectmen, offered to meet at 8:00 a.m. on Wednesdays to process backlogged Step IV grievance reviews. Knight testified (Finding No. 11) that this did not occur because the selectmen "could not work it into our schedule," yet when we read the Town's post-hearing brief, page 4, we learn that "by charter, the Selectman's [sic] regular meetings are held at the Town Hall at 8:00 a.m. on every Wednesday."

The "pretty picture" referred to three paragraphs earlier appears to be clouded by the parties' inability to deal with each other fairly and in good faith. "In every agreement there exists an implied covenant that each of the parties will act in good faith and deal fairly with the other," a requirement which applies to municipalities as contracting parties. Seward Construction Co. v City of Rochester, 118 N.H. 128, 129 (1978).

These proceedings do not involve a counter-claim or a cross complaint by the Union. We have been asked by the Union, in its answer, to order "the Town to take this [the disputed] grievance to arbitration" and "order such other relief as the Board deems just and proper." Accordingly, we make no findings against the Town relative to the conduct by and through the actions of its selectmen. We do find that the grievance, as stated in Union Ex. No's. 2 and 6, presents an arbitrable subject vis-à-vis compliance, or lack thereof, with the contract but not as to conveying authority to an arbitrator to direct the selectmen where and when to meet. The arbitrator's authority, if the Union were to prevail in such a grievance proceeding, would be an order directing the Town to comply with the terms of the CBA.

We find little to be gained, however, by ordering the parties to proceed to arbitration of the grievance in Union Ex. No. 2, other than a certain satisfaction for the Union should it prevail. If it were to prevail and the arbitrator were to find that the Town has violated Article 10.8 of the CBA, this is a drop in the bucket towards resolving the larger picture of an enormous backlog of Step IV reviews and towards the avoidance of further and on-going labor-management turbulence in Seabrook.

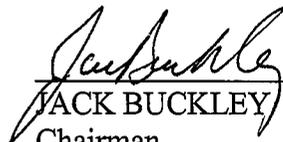
We find our remedy in Article 10.3.2 of the contract, the text of which appears on page 3, above. From an overall reading of Article 10, it appears to us that 10.3.2 was not intended to be an "escape clause," but rather a remedy for an inadvertent failure to process or for an omission under the contract. In either event, however, its provisions do provide a means for the Union to address its needs by exercising its contractual rights and proceeding directly to the next step, final and binding arbitration, for the backlogged grievances. The process, which we direct, should separate the serious grievances from the

less-than-serious grievances, reduce the backlog and bring closure to matters too long in the waiting.

In summary, we DISMISS all charges of unfair labor practices and deny all requests for relief sought by the Town. We direct that the Union submit and process for arbitration any and all of the cases now backlogged and awaiting Step IV review by the selectmen within the next thirty (30) days, seeking no arbitration date earlier than seventy (70) days from the date hereof. The selectmen shall conduct Step IV reviews, during business hours and consistent with the manner in which they have conducted these reviews for this bargaining unit in the past, within the next fifty (50) days. At the end of that fifty (50) day period but not longer than sixty (60) days from the date hereof, the Town and the Union shall meet to discuss the disposition of any cases not yet resolved. Any cases for which arbitration has been requested within the thirty (30) day window and for which resolution has not been reached within sixty (60) days of the date hereof shall proceed to grievance arbitration. Any case which has not been identified and processed for arbitration and/or which has not been settled by joint action of the parties by the sixty-first (61st) day from the date hereof shall be deemed waived and withdrawn for failure to have been identified and processed for grievance arbitration.

So ordered

Signed this 23rd day of May, 2003.



JACK BUCKLEY
Chairman

By unanimous decision. Chairman Jack Buckley presiding. Members E. Vincent Hall and Seymour Osman present and voting.