



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Hampton Police Association		*	
		*	Case No. P-0719-19
Complainant		*	
v.		*	Decision No. 2005-113
		*	
Town of Hampton		*	
		*	
Respondent		*	
		*	

APPEARANCES

For the Union: J. Joseph McKittrick, Esquire, McKittrick Law Offices

For the Town: Elizabeth A. Bailey, Esquire, Sheehan Phinney Bass +Green, PA

BACKGROUND

This case is before the Board based upon an improper practice charge filed by the Hampton Police Association (hereinafter "the Union") against the Town of Hampton (hereinafter "the Town") on June 1, 2005 alleging that the Town violated RSA 273-A:5 I (a), (b), (c), (e), (g) and (h) as a result of a memorandum posted by the Town's police chief to "All Hampton Police Officers" on May 19, 2005.¹ The Union contends that the posting demonstrates that the Town has not negotiated in good faith with the recognized and certified bargaining representative, and that it has otherwise attempted to address and coerce the Union's membership by direct communication. In its essence, the dispute before the Board questions the legality of the police chief undertaking this direct communication to members of a certified bargaining unit. The Town filed its answer to the Union's improper practice charge on June 10, 2005, wherein it denied any violation of the law and asserted that the police chief's communication was a valid exercise of management's right to communicate with its employees. The Union requests that the Board find that the Town committed an improper labor practice, order the police chief to cease and desist from communicating similar information to members of the union in such a manner and that the

¹ During the course of the pre-hearing conference, Union counsel indicated that the allegation relative to the Town's abolishment of private duty details (See Improper Practice Charge, Attachment, ¶ 26) was not being pursued in the instant forum. Accordingly, this portion of the Union's charge shall be considered withdrawn.

Board order the Town to post a copy of its decision in this matter in an area generally used for public notices for a period of thirty days. For its part, the Town requests that the Union's complaint be dismissed and requests an award of reasonable attorney's fees.

A pre-hearing conference was conducted on July 13, 2005 at which time the parties agreed that this matter was primarily one which presented an issue of law as they were in agreement as to the relevant facts. The parties requested that they be allowed to go forward on offers of proof, a submission of joint exhibits and stipulated facts, and oral argument with the submission of legal memoranda for the Board's consideration and decision. A final hearing followed on July 19, 2005 at which time the Board allowed the case to proceed on offers of proof, accepted, without objection, the submission of two joint exhibits and the submission of the parties' eleven stipulated facts. These facts appear below as "Findings of Fact" #1-#11. At the final hearing both parties were represented by legal counsel, presented the stipulated facts and exhibits and had the opportunity to present witnesses and conduct cross-examination in the event a dispute arose following offers of proof or in the event the Board required testimony. During the presentation of counsel, a discrepancy became apparent relating to Joint Exhibit # 1 which was subsequently withdrawn and in its place a Joint Exhibit #1X was substituted by agreement. Thereafter, brief oral argument was made and the record closed after a ruling by the Chairman that supplemental legal briefs were not necessary to the Board's deliberations unless it later deemed them to be so.

FINDINGS OF FACT

1. That the Town of Hampton (hereinafter "Town") is a public Employer as defined by the provisions of 273-A et. seq.
2. That the Hampton Police Association, Inc. (hereinafter "Association") is the Exclusive Bargaining Representative for two (2) bargaining units: the first consisting of all Police Sergeants; the second consisting of all full time and all part time Police Officers.
3. That the Association and the Town are parties to two (2) separate CBAs for the units noted above for the period April 01, 2003 to March 31, 2006.
4. That on or about April 12, 2005, the Association made a demand to commence Impact Bargaining,
5. That the parties met for Impact Bargaining May 04, 2005.
6. That the specific issues raised and/or discussed are not relevant to the instant Unfair Labor Charge before the PELRB.
7. That the parties reached no agreement on the issues presented for bargaining, but did discuss various proposals for alternative procedures or solutions.
8. That Steven Henderson is the President of the Association and was one of the individuals on the Association's Impact Bargaining team present on May 04, 2005.

9. That Chief William Wrenn is the Chief of Police for the Town of Hampton and was one of the individuals on the Town's Impact Bargaining team present on May 04, 2005.
10. That after the bargaining session of May 04, 2005, President Henderson reported to his membership on the issues raised during the bargaining session, by an e-mail dated May 18, 2005 which has been marked as Joint Exhibit # 1. (Later replaced during the hearing with Joint Exhibit #1X)
11. That on or about May 19, 2005, the Town's Chief of Police, William Wrenn posted a letter to "All Hampton Police Officers" on the Department's official bulletin board which has been marked as Joint Exhibit # 2.
12. The e-mail communication initiated by the union president was sent in response to an article that appeared in a local paper.
13. The union president chose to communicate his message using the Town's computer system and to communicate to all departmental employees including non-bargaining unit members.

14. The union president had historically used this mode of communication for union business for convenience.
15. The Town's computer e-mail program has a pre-established default addressees' grouping of "ALL" meaning each department employee receives the communication. There was at the time no such pre-established grouping for only bargaining unit members.
16. The police chief's memorandum that was posted on the bulletin board (See Joint Exhibit #2) was undertaken in response to the union president's e-mail. (See Joint Exhibit #1X).
17. The contents of both communications related to positions taken by each party during the so-called "impact bargaining" undertaken to address, among other things, an issue relating to private details that was a subject of this bargaining.
18. The police chief chose to communicate his message to all police officers and not to the Association president or other leadership of that group.

DECISION AND ORDER

JURISDICTION

The Public Employee Labor Relations Act (RSA 273-A) provides that the PELRB has primary jurisdiction to adjudicate violations of RSA 273-A:5, I between the duly elected "exclusive representative" of a certified bargaining unit comprised of public employees, as that designation is applied in RSA 273-A:10, and a "public employer" as defined in RSA 273-A:1,I. (See RSA 273-A:6,I).

DISCUSSION

The focus of this case is narrow. The Association has complained that on or about May 19, 2005 the police chief communicated to all of the Town's police officers, in his management representative capacity. The contents of his communication (Joint Exhibit #2) were expressed in writing on official stationery and publicly posted in a manner designed to be accessible and viewable to all police officers, including members of the bargaining unit. The contents of this management communication related to matters subject to the "impact bargaining" negotiations between the parties and was communicated in direct response to a previous e-mail authored by the association president and distributed via the Town's computer intranet. The union president had directed his earlier e-mail to an audience that knowingly included all of the departmental employees including the police chief. Each person's communication alleged that the other party had provided misinformation or misrepresented the actual positions of the parties at negotiations.

Labor law has long recognized a foundation principal that once a bargaining unit has elected an exclusive representative, management is bound to conduct all negotiations, including communications regarding issues in negotiations through the duly certified exclusive representative. In this case, that would be the president of the association, chairman of the negotiating committee or their designees. Notwithstanding this longstanding precedent, in this case the police chief chose not to do so. Instead, he undertook to author remarks that the Board fairly reads to be directed to members of the association and not limited to the association's chosen leadership at that time. The court has expressed its disfavor of so-called "direct dealing" when it acknowledged that, "[i]f an employer can negotiate directly with its employees, then the statute's purpose of requiring collective bargaining is thwarted." Appeal of Franklin Education Association, 136 N. H. 332,336. To fail to negotiate in good faith by ignoring the commonly understood requirement to communicate substantive positions on specific issues in negotiation only through the bargaining unit's recognized leadership is a violation of RSA 273-A:5, I(e).

The police chief's memorandum contains representations that management's proposal "would have paid ALL OFFICERS \$27 PER HOUR FOR WORKING DETAILS...and would pay ALL THE INSURANCES, INCLUDING WORKER'S COMPENSATION AND LIABILITY INSURANCE" (emphasis as appears in the original). We believe such wording constitutes a "promise of benefit" (See 29 U.S.C. § 58 (c) for promises are what characterizations of hourly compensation and insurance benefits are when communicated by management to employees, especially in a negotiations context. To the extent that there ever has been reliance by the New Hampshire courts on that federal statute for guidance in the past, See Appeal of the City of Portsmouth, Board of Fire Commissioners, 140 N.H. 435,439, we distinguish the applicability of that rationale in the instant case. While we may agree that broad communication of some arguments, views or opinions by management are permissible under some circumstances, those circumstances are not present here. We cannot cloak such "promises of benefit" as are obviously stated here with material woven from representations that the chief's language is merely exemplary of the common free flowing repartee between management and employees necessary to the efficient day to day operation of the department.

Before concluding, we think it noteworthy to address the actions of the Association's president with the intent of eliminating such conflicts in the future and contributing to harmonious and cooperative labor relations between these two parties. While the law governing the use of public employer computer systems by employees, e.g. intranet, for the conduct of union business may be said to be in a nascent phase, we do not believe that the "convenience factor" can long support the act of broadcasting argumentative comments relating to management statements or conduct under the banner of communication of "union business". Future communication by the president knowingly intended to reach individuals outside of the bargaining unit cannot be seriously considered to be "union business" nor afforded those protections normally accorded genuine union communiqués. The parties should expressly resolve the protocols for usage of the intranet and if present use is to continue, the intranet should be reconfigured to allow directed communication to members of the Association or, the Association shall abandon convenience as its rationale for its low level of service and delete non-unit members from the distribution list for its "union business" e-mails.

We find that the police chief's actions constitute the commission of an improper labor practice by the Town. The Town, and its representatives, shall cease and desist from directly dealing with the Association's members in the manner as factually found in this case, or in undertaking conduct that could reasonably be considered by this Board as the equivalent. A copy of this decision shall be posted for a period of thirty (30) days on the Department's official bulletin board, or the same bulletin board on which the police chief's memorandum had been posted if they are not one in the same.

So ordered.

Signed this 8th day of September, 2005.


Bruce K. Johnson, Alternate Chairman

By unanimous vote. Alternate Chairman Bruce K. Johnson presiding with Board Members James M. O'Mara, Jr. and E. Vincent Hall also voting.

Distribution:

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