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Donald E. Mitchell, Executive Director

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BOARD DECISIONS

International Brotherhood of Police Officers,
Local 563

Complainant

Case No. P-0776-2

v.

Decision No. 2004-191

Town of Atkinson

Respondent

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The International Brotherhood of Police Officers (IBPO), Local 563 (hereinafter "the Union") filed an unfair labor practice complaint on October 25, 2004 alleging that the Town of Atkinson (hereinafter "the Town") committed unfair labor practices in violation of RSA 273-A:5 I (a), (b), (c), (d) and (g). The Union alleges that on or about June 21, 2004, Officer Gary Lorden ("Lorden"), a shop steward and member of the Union's Executive Board, filed a grievance regarding shift assignments and thereafter suffered retaliation and discrimination because he engaged in protected union activity. More specifically, the Union states that after the grievance was filed, Chief of Police Philip Consentino ("Consentino") came out of his office and asked "what the hell is this" (referring to the grievance) and stated that he would take away Lorden's hours and take him off Saturday day shifts. According to the Union, Lorden was thereafter removed as the Saturday day dispatcher the following week, an assignment he had held for over six (6) years, and that Consentino also changed the shift schedule to prevent Lorden from working extra hours.

Moreover, the Union avers that on or about July 7, 2004 Consentino arrived at the station and ordered Lorden to step outside. As described by the Union, Consentino told Lorden that the gloves were off and that he (Consentino) was going to get him (Lorden). The Union states that on July 8, 2004 Lorden received a written reprimand from Consentino alleging that he had neglected his duties as Evidence Room Director, and that he was removed from that assignment as well as that of firearms instructor. Additionally, the Union alleges that despite the existence of open dispatching shifts, Consentino has significantly reduced the number of hours worked by Lorden and filled said dispatching shifts with employees who are not designated as dispatchers under the department's standard operating procedures, including Consentino's wife.

As remedies, the Union requests that the PELRB (1) immediately issue a cease and desist against the Town pursuant to RSA 273-A:6 III; (2) order the Town to cease and desist in its violation of employees' rights under RSA 273-A; (3) order the Town to make Lorden whole for any dispatch and or patrol shifts that he was otherwise entitled to, in addition to any benefits lost as a result of the Town's reducing his hours; (4) restore Lorden to the position of Firearm Instructor and Evidence Room Director; (5) order the Town to make the Union whole for any and all costs and expenses incurred to pursue the instant unfair labor practice charge; and (7) order any and all other relief that the Board deems just and appropriate under the circumstances.

The Town filed its answer denying the Union's charge on November 9, 2004. The Town specifically denies the Union's allegation attributing certain statements being made by Consentino, on or about June 21, 2004, following the filing of Lorden's grievance. While the Town admits that beginning in the summer of 2004 it discontinued staffing its own dispatcher center on Saturday mornings, it states that this was the result of a study of when call volumes were high enough to justify the Town staffing its own dispatch center. Moreover, while the Town admits that Consentino and Lorden spoke on or about July 7, 2004, in all other respects it specifically denies the Union's allegations of what occurred at that time. The Town indicates that during the summer months it extended dispatcher hours to 5:00 PM, but during non-summer months the end of dispatcher shifts remained at 4:00 PM, and that, in any event, during the summer Lorden did not seek permission to work any 4:00 PM - 12:00 AM patrol shifts immediately after he worked a dispatch shift. In reference to the Evidence Room Director assignment, the Town states that Lorden was performing those responsibilities unsatisfactorily and did not correct certain deficiencies after supervisors brought them to his attention. As to the firearms instructor, the Town asserts that Sgt. Baldwin held the assignment prior to his call to military duty and that it was restored to him upon his return.

The Town denies that it has otherwise wrongfully reduced Lorden's hours, stating that on several occasions Lorden has refused to work shifts that were offered to him. It maintains that it has used other officers to work dispatch on a temporary basis, and that Officer Consentino, along with Lorden, were each assigned one dispatch shift as replacements for another employee who went on extended medical leave. Answering further, it states that Officer Consentino, the Chief's wife, is the dispatch supervisor and has worked for the Town for approximately 27 years. The Town points out that Lorden had worked 951 hours from January 2004 to October 2004, and therefore would almost certainly exceed 1000 hours for the year, the minimum under the CBA for entitlement to insurance benefits. The Town further states that the Union's charge is barred by its failure to exhaust remedies under the grievance/arbitration procedure in the parties' collective bargaining agreement (CBA). Accordingly, the Town requests that the PELRB (1) dismiss the Union's unfair labor practice charge; and (2) grant such further relief as may be appropriate and within the PELRB's jurisdiction.

A pre-hearing conference was conducted on December 1, 2004 at PELRB offices before the undersigned hearing officer. At the outset of the pre-hearing conference, the hearing officer disclosed to the parties that he had previously served as counsel to the IBPO, and while working in such capacity had represented the complainant. The hearing officer indicated that he has no personal knowledge as to the facts giving in the instant complaint, and expressed his belief that he could conduct the pre-hearing conference in a fair and impartial manner. The parties' counsel stated that they had no objection to the hearing officer conducting the pre-hearing conference. The hearing officer does, however, recuse himself from any further participation in the PELRB's consideration of the instant matter.

PARTICIPATING REPRESENTATIVES

For the Union: Diane S. Byrnes, Esq.

For the Town: Abigail J. Sykas, Esq., on behalf of Michael S. Elwell, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

(1) Is the Union's improper practice charge barred by its' failure to exhaust grievance/ arbitration remedies?

(2) If not, did the Town retaliate and/or discriminate against Officer Gary Lorden in both working conditions and tenure due to his engagement in protected union activity in violation of RSA 273-A:5 I (a), (b), (c), (d) and/or (g), based upon:

- Alleged remarks made by Chief Consentino on June 24 and July 7, 2004, and/or
- Alleged scheduling and assignment changes?

(3) Did the Town derivatively act and restrain, coerce and otherwise interfere with its employees in the exercise of their rights, conferred by RSA 273-A, in violation of RSA 273-A:5 I (a), (b), (c) and/or (g), based upon:

- Alleged remarks made by Chief Consentino on June 24 and July 7, 2004, and/or
- Alleged scheduling and assignment changes?

(4) If so, what shall be the appropriate remedy(ies)?

WITNESSES

For the Union:

1. Officer Gary Lorden
2. Sergeant William Baldwin
3. Steve Isola
4. John Centola
5. Officer Chris Ryan
6. Chief Philip Consentino
7. Sgt. Phil Farrar

For the Town:

1. Chief Philip Consentino
2. Sergeant William Baldwin

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement, '03 - '06.
2. Memo from Steve Isola to Chief Consentino, dated 6/18/04
3. Grievance dated 6/21/04
4. Assignment sheets
5. Section 330 development of discipline 7/8/04
6. Memo from Chief to all APD Officers 7/8/04
7. Memo from Chief to Officer Lorden 8/9/04
8. Replacement pages memo 9/15/04

For the Union:

None other than those marked as joint.

For the Town:

1. Documents and photos re: evidence room.
2. Correspondence and Documents re: scheduling and assignments.
3. Documents re: employee discipline and employee grievances.
4. Personnel File of Officer Lorden.
5. Documents concerning qualifications of personnel.
6. Job descriptions and rosters.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one (1) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before January 7, 2005 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.

DECISION

1. The parties' representatives shall meet, or otherwise confer, on or before January 7, 2005 in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB at least five (5) days prior to the date of the hearing.
2. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to opposing counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
3. The parties shall file any preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

Tuesday, February 8, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

5. During the course of the pre-hearing conference, the parties' representatives indicated their mutual desire to file post-hearing briefs in this matter, subject to the Board's approval. In this regard, the parties intend to seek a thirty (30) day time period within which to file said briefs and, in light this forthcoming request, will not be filing briefs at the time of the hearing.

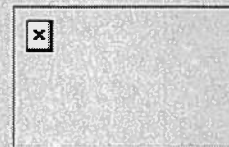
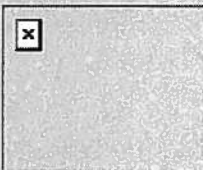
So ordered.

Signed this 9th day of December, 2004.

/s/ Peter C. Phillips
PETER C. PHILLIPS, ESQ.
Hearing Officer

Distribution:
Diane S. Bymes, Esq.
Michael S. Elwell, Esq.

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