



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

United Steelworkers of America (Local 8938)

v.

City of Manchester
(Water Works)

Case No. G-0058-39
Decision No. 2024-206

Appearances:

Shawn J. Sullivan, Esq., Concord, NH for the complainant

Matthew H. Upton, Esq., Drummond Woodsum & MacMahon, P.A., Manchester, NH
for the respondent

Background:

The United Steelworkers of America (Local 8938)(Union) filed this unfair labor practice complaint on June 27, 2024, because the Manchester Water Works Division (City) allegedly failed to provide historical employee sick leave and discipline information the Union requested in connection with a grievance. The Union claims the City has violated the following subsections of RSA 273-A:5, I:

- (a)(to restrain, coerce or otherwise interfere with its employees in the exercise of the rights conferred by this chapter);
- (b)(to dominate or to interfere in the formation or administration of any employee organization);
- (e)(to refuse to negotiate in good faith...);
- (g)(to fail to comply with this chapter or any rule adopted under this chapter); and
- (h)(to breach a collective bargaining agreement).

As relief, the Union requests an order requiring the City to produce the requested sick leave and

disciplinary records, a cease and desist directive providing that the City shall not refuse future information requests, and the award of costs and legal fees to the Union.

The City denies the charges. According to the City, the request for information is moot because the City granted the grievance in July. The City also argues the complaint is frivolous, unnecessary, and intended to intimidate the City and interfere with its rights contrary to RSA 273-A:5, II (a), was filed in bad faith in violation of RSA 273-A:5, II (a) and (g)¹, and is retaliation for the City's termination of the Union vice president in an unrelated matter. The City requests that the PELRB find it did not commit an unfair labor practice, deny all Union requests for relief, award the City attorney fees, and such other relief as justice requires.

The undersigned held a hearing on the complaint on August 16, 2024, at which time both parties presented evidence and argued their respective positions. The decision in this case is as follows:

Findings of Fact

1. The Union is the exclusive representative of certain employees of the Manchester Water Works, and Kevin MacArthur is the president of Local 8938.
2. The City of Manchester Water Works Department is a public employer within the meaning of RSA 273-A, and Philip Croasdale is the Director of the Water Works Department.
3. The parties' grievance procedure is set forth in Article 29 of their collective bargaining agreement (CBA). It includes a Union grievance committee, authorized to meet weekly when there are grievances to pursue. Step 1 of the grievance procedure is employee discussion of the grievance with their immediate supervisor, Step 2 is submission in writing to the Division Head, Step 3 is an appeal to the Water Works Director, Step 4 is a pre-arbitration meeting, following by

¹ However, the City did not file an unfair labor practice complaint against the Union .

final and binding arbitration if the grievance has not otherwise been granted, settled, or withdrawn.

4. On or about April 15, 2024, a represented employee received a verbal warning that he had improperly used sick leave to avoid dealing with issues at the Water Works Plant. Under CBA Article 28, Disciplinary Procedures, verbal warnings are removed from personnel records after 12 months if stated requirements are satisfied. At its April 26 meeting, the Union grievance committee decide to grieve this verbal warning.

5. The Union believed historical sick leave and related discipline records could be relevant to its analysis and handling of the grievance, and beginning May 6 MacArthur and Croasdale exchanged numerous emails on this subject:

MacArthur to Croasdale:

The union requests the following information to investigate and process a possible grievance:

-Sick leave records for all employees for the past 7 years. This is to include day of the week, date in which sick time was utilized, how many hours used for each occurrence, and also the year ending totals for each employee. Also, if any specific employee has a differing schedule other than normal business hours, Mon-Fri, please make notation of each (e.g., Treatment plant/Patrol employees).

-A list of employees currently disciplined with regard to their sick leave usage. Please submit this information to the union by Tuesday May 14th, 2024.

Croasdale to MacArthur:

This is a little excessive with no grievance. File grievance and I'll respond.

MacArthur to Croasdale:

I don't mean any disrespect Phil, but we have been here before many times. The union needs this information. It's not a lot of information, should be readily available to management, and I think the Tuesday deadline is more than adequate. If it's not, then please explain with a request for more time.

Croasdale to MacArthur:

You're asking for 7 years of sick time summary for 85-90 employees with all kinds of conditions.

If you need to file (a) grievance, then file it. That's your prerogative.

I'm not going to ask the PR (payroll) person to spend 20 hours for you to decide on filing (a) grievance. I think it's excessive.

I know you haven't gotten hours reports for the past several months but you have the previous six year(s) to that.

You can extract the same information from them as PR can. If you need to look at time slips, you're more than welcome to come in and I'm sure we can pull out whatever you need.

If you don't want to do it, ask one of your officers in (the) office to do it but it will be during off hours.

6. The Union filed a grievance on or about May 8, 2024, apparently at step 2 in writing to the Division Head.

7. MacArthur emailed Croasdale on May 15 to reiterate his prior request for sick leave and discipline information. Croasdale stated, "this information is for a grievance that was denied for untimeliness." MacArthur replied this was a refusal to provide the requested information, and Croasdale declared that the right to grieve the verbal warning with the grievant's supervisor expired after five working days, on April 23. MacArthur also notified Croasdale that the Union wished to proceed to the next step in the grievance procedure.

8. MacArthur followed up on May 22 and requested Croasdale's Step 3 response to the grievance. Croasdale responded there was no grievance due to untimeliness per the CBA. They subsequently argued about this in several emails, followed by an email on May 24 from Human Resources Director Lisa Drabik advising that normally the next step would be a pre-arbitration hearing, "but it seems to me there is nothing to discuss per (CBA Article) 29.6 given the

timeliness issue.” She advised she would consult with the City’s attorney to see if the City would proceed with pre-arbitration anyway while reserving the timeliness argument. By May 29 a pre-arbitration meeting had been scheduled for July 1 to discuss the May 8 verbal warning grievance and others.

9. On June 26, USW Staff Representative John Perry emailed Croasdale, Drabik, and Upton and restated MacArthur’s pending request for sick leave and discipline records, requesting delivery within 3 business days. Croasdale responded that the verbal warning was not about “sick leave abuse or the fact that he called in sick. It’s about him calling in sick when he knows there are issues at the Plant and he doesn’t want to have to deal with them. We’re not saying he uses more sick leave than others so it’s irrelevant to compare. He’s calling in sick to avoid a hassle. We can resolve that one (the grievance at issue) easily.”

10. At hearing, Croasdale acknowledged that he learned from the City’s attorney that the timeliness issue would be addressed in arbitration per applicable law and therefore the grievance should still be processed. He felt the amount of time that would be required to pull together any requested information that the Union did not already possess was significant, and also unnecessary, because he had decided to grant the grievance, as a “message was sent.” He acknowledged it was not his job to determine what information the Union needed to provide representation in grievance proceedings.

11. At the July 1 pre-arbitration, the City informed the Union that the May 8 grievance was granted.

12. The Union consistently requested sick leave and disciplinary records to obtain information that it reasonably believed would assist its evaluation and handling of the disputed grievance. There is no credible evidence that the Union was motivated by improper or retaliatory

reasons. The same is true with respect to this complaint, which the Union filed to enforce its exclusive right to represent bargaining unit employees in CBA Article 29 grievance proceedings and the corresponding right of employees to such representation, determine how it will provide such representation, and protect against the City's interference with these rights and the administration of Union business.

Decision and Order

Decision Summary

The City's refusal provide the requested information, or to even work with the Union in a meaningful way, to provide the requested information, in connection with a pending grievance as it was advanced through the steps of the grievance procedure, is an unfair labor practice. The City violated RSA 273-A:5, I (a), (b), and (g). Because this case does not involve collective bargaining agreement negotiations and the PELRB does not have jurisdiction over breach of CBA claims where the final step of the grievance procedure is final and binding, the alleged violations of sub-sections (e) and (h) are dismissed.

Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

Discussion:

At the outset, it should be noted that although the Union's request for the sick leave and disciplinary records are moot, the alleged violations of the cited sub-sections of RSA 273-A:5, I and other requests for relief are not. Per RSA 273-A:4, every collective bargaining agreement must have workable grievance procedures, and the Union's statutory rights include the specific right to represent bargaining unit employees in the "settlement of grievances." RSA 273-A:11, I

(a). It is the Union's prerogative, as the duly certified bargaining unit representative, to evaluate potential grievances and determine what level of representation is appropriate and justified, and represented employees are entitled to the benefit of this arrangement. These rights necessarily include access to records of the type at issue in this case which help to ensure meaningful and timely access to the contractual grievance procedure. See, e.g., *AFSCME Local 3657, Weare Police Employees v. Town of Weare*, PELRB Decision No. 2014-006 (January 8, 2014) and *United Steelworkers of America v. Manchester Water Works*, PELRB Decision No. 2016-018 (February 10, 2016).

In the context of this case, these principles lead to the finding that the City thwarted the Union and represented employee's exercise of these rights, in violation of RSA 273-A:5, I (a), (b), and (g). The City's actions are not excused by Director Croasdale's misapprehension of the timeliness issue. Even after Croasdale learned that the timeliness issue would be resolved, as necessary, in arbitration², the City did not attempt to produce the requested information or come to agreement with the Union on what information the Union did not already have and how it when it would be provided. Instead, the City continued to ignore the Union's information request. The fact that Croasdale ultimately granted the grievance did not justify or excuse the way the City handled the Union's information request, especially when Croasdale's decision was not communicated to the Union until July 1.

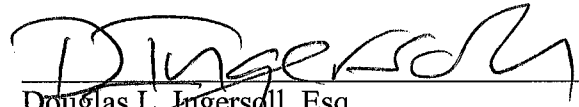
For the reasons stated, the City has committed an unfair labor practice in violation of RSA 273-A:5, I (a), (b), and (g). The alleged violations of sub-sections (e) and (h) are dismissed since this case does not involve contract negotiations and the PELRB does not have jurisdiction over breach of CBA claims where the final step of the grievance procedure is final and binding.

² *Appeal of Hillsborough County Nursing Home*, 166 N.H. 731 (2014).

See *Appeal of Silverstein*, 163 N.H. 192 (2012). As relief, the City is ordered to adhere to the principles governing the Union's rights of representation in the settlement of grievances discussed in this decision going forward. All requests for an award of attorney fees and costs are denied.

So ordered.

Date: 10/9/2024



Douglas L. Ingersoll, Esq.
Executive Director/Presiding Officer

Distribution: Shawn J. Sullivan, Esq.
Matthew H. Upton, Esq.