



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**STATE EMPLOYEES ASSOCIATION
SEIU, LOCAL 1984**

Petitioner

and

**STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE HOSPITAL**

Respondent

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CASE NO. S-0394-1

DECISION NO. 2000-063

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The State Employees Association, SEIU, Local 1984 (Association), filed unfair labor practice charges on May 10, 2000 alleging that the State of New Hampshire (State) and its agents failed to bargain in good faith in violation of RSA 273-A:5 I (e), when the State failed to submit the Fact Finder's Report, dated August 30, 1999 to the Executive Council. The State generally admits the allegations contained in the Details of Charges within the Petition and denies that its refusal to present the report is a violation of RSA 273-A. Further, the State asserts that these negotiations were undertaken pursuant to RSA-A:9 and that the matters addressed by the Fact Finder involved issues of lateral transfers and labor management committees. As such, the State asserts that these issues are not unique to a single unit but affect state employees generally and are not, therefore, properly subjects of bargaining at the unit level. The State then attempts to cross-complain that to insist upon permissive or prohibited subjects of bargaining beyond the point of impasse constitutes an unfair labor practice on the part of the Association. No statutory reference accompanies this cross-complaint. Nevertheless the State seeks relief in the form of the PERLB dismissing the Association's complaint and finding that it has committed an unfair labor practice and further determining that the issues in dispute are not proper subjects of bargaining at the unit level. The Association, for their part, seek to have the PERLB compel the State to put the Fact Finder's Report on the Executive Council's Agenda within thirty (30) days.

PARTICIPATING REPRESENTATIVES

For the Complainant: Dennis T. Martino, Collective Bargaining Manager

For the Respondent: Thomas F. Manning, Director of Personnel, State of New Hampshire

PARTIES' STIPULATION

The parties stipulated that the sole matter that is dispositive of their respective positions can be phrased by the question, "Does RSA 273-A:9 prevent the issues of 'lateral transfers' and 'labor management committees' contained within the Fact Finder's Report, dated August 30, 1999, from being submitted to the Governor and Executive Council because they are not so-called 'unit based'?"

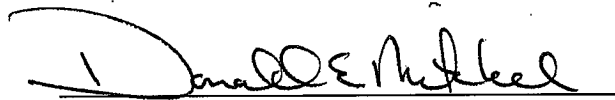
PROCEDURAL ORDERS

1. The parties shall meet and confer to develop an "Agreed Statement of Facts" relevant to this issue. This mutual statement shall be signed by the parties and submitted to the PELRB on or before July 24, 2000. It should include itemized and numbered statements of facts that the parties agree are necessary for the Board's consideration of the legal arguments to be advanced in their respective dispositive pleadings that are to be submitted to the Board.
2. In the event that the parties do submit the "Agreed Statement of Facts" by July 24, 2000, then each shall file such appropriate dispositive pleadings with the Board, including memoranda of law in support thereof on or before August 11, 2000.
3. Thereafter, the parties specifically agree that the Board may render its decision regarding this issue and make such orders as necessary based upon the "Agreed Statement of Facts" as submitted and the relevant law as applied without the need for further hearing, unless the Board determines, on its own initiative, that the testimony of witnesses or oral arguments of law are necessary.
4. In the event that the parties are unable to come to agreement on all relevant facts, then each shall notify the Board on or before July 24, 2000, in which case they shall submit their "Agreed Statement of Facts" containing only those facts upon which they have agreed. The Board will then schedule an evidentiary hearing, in its normal course, to hear testimony and receive evidence on relevant facts remaining in good faith disagreement.

5. Should an evidentiary hearing be deemed necessary in accordance with Paragraph #4, above, the parties shall exchange their final witness lists and final exhibit lists and submit the same to the Board no later than five (5) business days before any such evidentiary hearing is to be conducted. Thereafter, additional witnesses and exhibits shall be allowed only upon a showing that reasonable efforts would not have revealed the necessity of such testimony or submission of such evidence before that time.

So ordered.

Signed this 7th day of July, 2000

A handwritten signature in cursive script, reading "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer