

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NH State Employees' Association, Inc.,
SEIU Local 1984

Petitioner

v.

NH Department of Health and Human Services

Respondent

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Case No. S-0308-6

Decision No. 2003-089

PRE-HEARING ORDER

BACKGROUND

State Employees Association of New Hampshire, Inc., SEIU Local 1984, (hereinafter referred to as the "Union") filed unfair labor practice charges against the State of New Hampshire's Department of Health and Human Services (hereinafter referred to as the "State") on May 16, 2003 alleging violations of RSA 273-A:5 I (e), (g), (h) and (i). Specifically, the Union alleges that the State has failed to fully implement an arbitrator's award, issued on November 19, 2002, ordering the re-instatement of certain grievants and the award to them of certain amounts of money and so-called "make-whole" compensation. There had previously been an arbitration award issued as to arbitrability dated June 30, 1999.

This matter was first heard by this board as PELRB Case No. S-0308:2 wherein the Union alleged that the State's refusal to abide by an arbitrator's decision regarding arbitrability amounted to an unfair labor practice. That complaint resulted in PELRB Decision No. 1999-039 upholding the arbitrator's decision, finding that the State had committed an unfair labor practice and ordering the State to arbitrate the merits of the grievants' claims. The State appealed the PELRB decision to the Supreme Court. On

October 23, 2001 the Supreme Court affirmed the PELRB decision ordering the parties to arbitration on the merits.

The State of New Hampshire filed its answer on May 30, 2003. The State essentially agrees with the chronology of events as alleged by the Union. The State further answers that the arbitrator retained jurisdiction over the issue of the remedy and asserts that the Union's complaint is not ripe for adjudication before the board at this time.

PARTICIPATING REPRESENTATIVES

For the Union (Complainant): Michael Reynolds, Esquire, General Counsel
SEA Local 1984

For the State (Respondent): Frank D. Nachman, Esq., Counsel to Department of Health
and Human Services

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether the issue raised by the Union's complaint is "ripe" for adjudication for review by the PELRB?
2. Whether the issue raised in the Union's complaint is moot as to certain grievants?
3. Whether the actions and inaction of the State constitute a failure to comply with a duly issued arbitrator's award and therefore violative of RSA 273-A:5, I?

WITNESSES

For the Complainant:

1. Bette Jean Riordan
2. Lynette (Rose) Delois
3. Geraldine O'Connor
4. Robert Letellier
5. Dennis Martino

For the Respondent:

1. Allan S. McCausland, Phd., Arbitrator
2. Dennis Martino

In the event it is later determined that witness testimony is necessary. Both parties reserve the right to amend their List of Witnesses, as appears on their Pre-Hearing Worksheet, in conformity with administrative Rule Pub 203.01 (b). Each party shall also file a copy of any Witness List to the PELRB at the same time they forward it to the opposing representative. 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 Exhibit(s):

1. Arbitrator's Award, dated November 19, 2002

By the Complainant:

1. Correspondence and memoranda between the parties

By the Respondent:

1. Correspondence and memoranda between the parties

In the event that either party believes it is necessary to present additional exhibits, the parties reserve the right to amend their List of Exhibits, as appears in their respective Pre-Hearing Worksheets at least five (5) days prior to any evidentiary hearing, or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Administrative Rule Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

In the event that it becomes necessary to conduct an evidentiary hearing on the issues raised in the instant complaint, one-half day will be allotted by the board to hear the case.


DECISION AND PRE-HEARING ORDER

Following discussion with the parties' representatives at the Pre-Hearing Conference, it is ordered as follows:

1. The parties have stipulated that the PELRB has jurisdiction to decide the issue raised by the Union's complaint.
2. The parties are in negotiations on certain issues and remain in arbitration on the remedy aspect of the remaining of four grievants, two others having been settled although the settlements were not memorialized at the time of the pre-hearing conference and another having become moot.
3. The parties represent that an additional period of time will serve their mutual interest to achieve harmonious labor relations and to allow the arbitrator to rule on the remedy aspect of the fourth grievant's claim.
4. The parties have requested that the PELRB hold this instant complaint in abeyance until October 15, 2003 or thirty days after the arbitrator's decision, whichever occurs first.
5. On or before October 15, 2003 the Union representative shall file a status of negotiations and arbitration report with the PELRB and provide a copy of the same to the State's representative.
6. The Union representative shall also file a copy of the arbitrator's pending decision with the PELRB within five (5) days of his own receipt of same.

Thereafter, unless either party has filed a request for a hearing with the PELRB within thirty (30) days of the date of the arbitrator's decision the parties have agreed that this matter may be administratively dismissed and the docket closed on this complaint.

Signed this 6th day of August, 2003.



Donald E. Mitchell, Esq.
Presiding Officer

Distribution:

Michael Reynolds, Esq., General Counsel, SEIU, SEA-NH

Frank D. Nachman, Esq., Counsel to Department of Health and Human Services