



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

State Employees Association of New Hampshire	*	
Local 1984 SEIU	*	
	*	
Petitioner	*	
	*	Case No. S-0384-7
	*	
v.	*	
	*	Decision No. 2003-151
State of New Hampshire	*	
	*	
Respondent	*	
	*	

PARTICIPATING REPRESENTATIVES

For the Complainant: Michael C. Reynolds, Esquire, General Counsel SEIU, SEA-NH

For the Respondent: Laura E. B. Lombardi, Esquire, Assistant Attorney General
Sara Willingham, Employee Relations Manager

BACKGROUND

The State Employees Association of New Hampshire, Local 1984, SEIU, (hereinafter referred to as the "Union") filed a complaint ("ULP") with the Public Employee Labor Relations Board on July 24, 2002 in which the Union alleged that improper labor practices had been committed by the State of New Hampshire (hereinafter referred to as the "State"). The Union states that at least fifty (50) percent of the employees within the Department of Safety bargaining unit held membership in the Union on July 26, 2001, the date agreed upon by the parties for a determination of the percentage of all bargaining unit members holding membership in the Union. The Union further states that notwithstanding the existence of that number of members, provisions within the parties' collective bargaining agreement ("CBA") and a previous decision of the Public Employee Labor Relations Board, the State has failed to implement the so-called "agency fee" provisions of the parties' CBA as it relates to Union services rendered to bargaining unit members within the Department of Safety. The Union alleges that the State's failure to implement the agency fee deduction is not only a breach of the parties' CBA but also constitutes a violation of RSA 273-A:5, I (a), (e), (g), (h) and (i).

The Union requests relief through an order of the PELRB that the State cease and desist from violating the CBA and that the State immediately implement the agency fee provisions of the parties' CBA. Claiming that the Union has had to litigate a clear right and to compel compliance with a previously issued PELRB decision relating to this matter, the Union requests that the PELRB order the State to pay all lost revenue calculated retroactively back to May 3, 2002 and order the State to pay the reasonable market value of all costs of legal representation and attorney's fees and all legal costs.

The State of New Hampshire responded by filing its answer on August 6, 2002 in which it denies all allegations of the Union except that the State agrees that the PELRB has jurisdiction over this action, that the PELRB issued previous decisions related to this matter, that since at least May 25, 2001 the Union has sought a finding of the existence of at least fifty (50) percent membership of the employees within the Department of Safety, and that the State's Director of Personnel had refused to implement the agency fee provisions of the parties' CBA based upon a prospective interpretation of a previous PELRB decision. The State requests that the PELRB find that it acted in accordance with law and the negotiated collective bargaining agreement. Further, the State requests the PELRB to dismiss the Union's complaint.

A Pre-Hearing Conference was conducted on August 28, 2002. Both parties were represented at that time and, after discussion between themselves and with the Hearing Officer, agreed to formulate certain stipulations that have been approved and that are incorporated into this Order.

PARTICIPATING REPRESENTATIVES

For the Complainant: Michael C. Reynolds, Esquire, General Counsel SEIU, SEA-NH

For the Respondent: Thomas F. Manning, Director, Division of Personnel
Sarah J. Willingham, Manager of Employee Relations

ORDER ON STIPULATIONS

The parties have discussed certain procedural aspects of this matter in light of the filing of the Petition for Declaratory Ruling, filed on August 9, 2002 by the Department of Employment Security (Case No. S-0306-1). On September 3, 2002 the parties filed stipulations for acceptance by the PELRB that appear below. The PELRB has reviewed the parties' mutually executed submission and finds as follows:

1. The pleadings and submissions to date on the instant case (PELRB Case No: S-0384-7) and on the related case (PELRB Case No: S-0315-2), establish a sufficient record for the Board to make a decision on this case No: S-0384-7.
2. The gravamen of the instant case revolves around the meaning and impact of the Board's Decision Nos: 2002-045 and 2002-057 in Case No: S-0315-2.

3. If those decisions are given retroactive effect, the parties agree that SEA had fifty percent (50%) or more membership at the NH Department of Safety (DOS) as of the "snapshot" date (July 26, 2001) for determining whether SEA did have 50% membership in any particular agency pursuant to the CBA Section 5.8.1.e.
4. However, SEA and the State did not achieve resolution of the fair share provisions for any of the 50% agencies until May 3, 2003. Thus, only after that date did any fair share provisions of the CBA for any of the 50% State agencies become effective.
5. It is SEA's position that the findings and decision in Case No. S-0315-2 were meant to and do have retroactive effect back to May 3, 2002. It is the position of the State that the findings and decisions of the Board in said case, especially in light of the word "Hereafter", and the fact Case No: S-0315-2 was a modification of unit composition action give the decision prospective effect only. The parties agree that their further arguments on these issues would be best presented at an oral argument on June 12, 2003.

DECISION AND ORDER

The prior decisions of the PELRB, Decision No. 2002-045 (Modification Order) and Decision No. 2002-057 (On Review, clarifying Modification Order) addressed solely the issue raised by the SEA's modification petition requesting that an existing bargaining unit be modified. The inclusion or exclusion of the specific employment positions named by the parties as appearing in those orders was the only issue presented to the PELRB at that time. The express application of those orders is prospective as evidenced through the use of the words "hereafter" and "henceforth". Having found that no retroactive relief was granted by the earlier decisions, and in light of the parties' stipulations, we hereby dismiss the unfair labor practice complaint against the State as alleged.

So Ordered,
On this 22nd day of December, 2003.



Doris M. Desautel, Alternate Chairwoman

By unanimous decision. Doris M. Desautel presiding. E. Vincent Hall and Seymour Osman present and voting.