



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
Case No. S-0308-7

Decision No. 2004-069

PRE-HEARING MEMORANDUM AND 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.

The State 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.

Pursuant to a Pre-Hearing Order issued on August 6, 2003 (Decision No. 2003-089), PELRB Case No. S-0308-6 was placed in abeyance pending receipt of an arbitrator's award and further negotiations between the parties. A second pre-hearing conference was scheduled for March 19, 2004 in order to review the status of the matter.

In the meantime, the Union filed a related unfair labor practice charge against the State on March 18, 2004 alleging violations of RSA 273-A:5 I (e), (g), (h) and (i), PELRB Case No. S-0308-7. Specifically, the Union alleges that the State has failed to fully implement an arbitrator's awards, issued on November 19, 2003 and October 30, 2003, respectively, that order

the re-instatement of Geraldine O'Connor and award her certain amounts of "make-whole" compensation. During the March 19th status conference, counsel for the parties requested an additional period of time to engage in settlement discussions. In light of this request and the filing of the new charge, to which the State had not yet had the opportunity to respond, a tele-conference was scheduled for April 15, 2004.

A tele-conference was conducted on April 15, 2004 at 10:00 AM, during which both parties were represented by counsel. At the request of the State's counsel, and without objection from Union counsel, an extension for filing the State's answer in Case No. S-0308-7 was granted and the answer was subsequently filed on April 16, 2004. Once again, the State essentially agrees with the chronology of events as alleged by the Union, but denies that it has engaged in an unfair labor practice.

PARTICIPATING REPRESENTATIVES

For the Union: Michael C. Reynolds, Esquire

For the State: Frank D. Nachman, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

PELRB Case No. Case No. S-0308-6:

1. Whether the issues raised in the Union's complaint are moot as to certain grievants?
2. Whether the actions and inaction of the State constitute a failure to comply with duly issued, final and binding, arbitrator awards and therefore violative of RSA 273-A:5, I (e), (g), (h) and (i)?

PELRB Case No. Case No. S-0308-7:

1. To what extent, if any, are the arbitrator's awards advisory?
2. Whether the actions and inaction of the State constitute a failure to comply with duly issued, final and binding, arbitrator awards and therefore violative of RSA 273-A:5, I (e), (g), (h) and (i)?
3. Whether the Grievant has sufficiently mitigated her damages and/or is there an "end date" to damages?

WITNESSES

For the Union:

1. Bette Jean Riordan
2. Geraldine O'Connor

3. Dennis Martino

For the State:

1. Allan S. McCausland, Phd., Arbitrator
2. Geraldine O'Connor
3. Dennis Martino
4. Bette Jean Riordan
5. Joanne Buntan, Div. of Personnel, Admin. Services
6. Jim Freydma, Comptroller, NH HHS

Both parties reserve the right to amend their List of Witnesses 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
2. Arbitrator's Award, dated October 30, 2003
3. Arbitrator's Award, dated November 19, 2003

Union Exhibits:

1. Correspondence and memoranda between the parties

State Exhibits:

1. Correspondence and memoranda between the parties

The parties reserve the right to amend their List of Exhibits at least five (5) days prior to any evidentiary hearing, or later, upon proper showing, with 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

The time being set aside for this hearing is 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 AND PRE-HEARING ORDER

Based upon discussions with the parties' representatives during the Pre-Hearing Conference held at PELRB offices on March 19, 2004, and subsequently during a teleconference on April 15, 2004, the Hearings Officer determines the following:

1. The parties stipulate to the Board's jurisdiction in this matter and to the consolidation of PELRB Case Nos. S-0308-6 and S-0308-7.
2. The parties' representatives shall meet, or otherwise confer, on or before **June 15, 2004** 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 said document with the PELRB at least five (5) days prior to the date of the hearing.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or 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.
4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
5. 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:

June 29, 2004 @ 9:30 AM

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

So ordered.

Signed this 6th day of May, 2004.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

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

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