



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

New Hampshire Troopers Association
and Trooper Debra Winters

Complainants

v.

New Hampshire Department of Safety,
Division of State Police

Respondent

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Case No: P-0754-16

Decision No. 2006-002

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The New Hampshire Troopers Association (hereinafter "the Association") filed an unfair labor practice complaint on October 14, 2005 alleging that the New Hampshire Department of Safety, Division of State Police (hereinafter "the Division") committed an unfair labor practice in violation of RSA 273-A:5 I (h) by breaching the collective bargaining agreement ("CBA") between the Association and the Division. Specifically, the Association claims that the Division's refusal to allow Trooper Debra Winters her right to shift bid in accordance with past practice constitutes a violation of Section 2.1 of the CBA. Section 2.1, as cited by the Association, provides that the Division "is subject to the provisions of law, personnel regulations and the provisions of this Agreement, to the extent that they are applicable." The Association asserts that the provision of the law that is applicable in the instant circumstances is RSA 354-A:7, which prohibits discrimination, among other things, based upon marital status and gender.

According to the Association, all troopers assigned to Troop A, with the exception of Trooper Winters, are allowed to bid for their shift of preference, but that the Division has prohibited Trooper Winters from doing so because her husband is a sergeant in the same troop. Since the Division's refusal to let Trooper Winters shift bid is discrimination based upon her marital status, the Association maintains that the Division has violated RSA 354-A:7 and therefore Section 2.1 of the CBA. Likewise, the Association contends that since the Division has in the past allowed male troopers who are related work together, the Division's position that she cannot work at the same time as her husband discriminates against her based upon her gender and also constitutes a violation of Section 2.1 of the CBA. As remedies, the Association requests that the PELRB (1) declare that the State has committed an unfair labor practice when refusing to allow Trooper Winters to shift bid like the other troopers at Troop A; (2) order the Division allow Trooper Winters to shift bid like the other troopers at Troop A; and (3) order such other and further relief as may be just.

The Division filed a response to the Association's charge on October 31, 2005, as well as a Motion to Dismiss. The Division denies that it has committed any improper labor practice. In answering further, the Division states that Trooper Winters has been allowed to shift bid for all bid rotations that have been made available to all troopers at Troop A since her permanent assignment effective on November 26, 2004, and thus has in fact been permitted Trooper Winters to shift bid like any other trooper at Troop A. In its Motion to Dismiss, the Division asserts, among other things, that the Association's grievance is defective because (1) Trooper Winters failed to file a Step I or Step II grievance in accordance with the contract, and (2) the grievance as presented to the Director of State Police was deficient of any notice as to what Article(s) and Section(s) of the CBA are alleged to have been violated by the Division. The Division requests that the PELRB grant its Motion to Dismiss; or, in the alternative, declare that the New Hampshire Department of Safety, Division of State Police did not commit an unfair labor practice, and order such other and further relief as it deems just.

The Association filed its objection to the Division's Motion to Dismiss on November 15, 2005. The Association states, *inter alia*, that the Division's position ignores the plain language of the CBA providing that at each step it is the response of the employer that triggers the employee's obligation to elevate the grievance to the next step. The Association also disputes various factual allegations made in the Division's motion and states that the facts of this case need to be determined during a hearing on the merits, not in motions and objections. The Association requests that the PELRB deny the Division's motion and schedule this matter for a hearing on the merits.

The instant dispute is presented to the PELRB as the final step of the parties' contractual grievance procedure. In accordance with Section 14.5.1 of the parties' CBA, "the decision of the [PELRB] shall be final and binding." A pre-hearing conference before the undersigned hearing officer was conducted on January 4, 2006 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Association: James W. Donchess, Esq.

For the Division: Marta A. Modigliani, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Whether the Board has jurisdiction over the Association's complaint based upon the Division's allegation that the Association has failed to follow the terms of the parties' contractual grievance procedure in pursuing the instant grievance.
- (2) If jurisdiction is appropriate, whether the Division has committed an unfair labor practice relative to its treatment of Trooper Debra Winters, specifically relating her shift bidding rights and the factors the Division may consider in determining her shift assignment, such as marital status or gender.
- (3) If the Division has committed an unfair labor practice, what shall be the appropriate remedy?

WITNESSES

For the Association:

1. Trooper Debra Winters
2. Trooper Charles Winters
3. Trooper Lou Copponi, Association President
4. Trooper Bruce Twyon, Association Past President

For the State:

1. Colonel Frederick H. Booth
2. Captain Mike Hambrook
3. Sergeant Scott Carr
4. Sergeant Gary Wood
5. Lieutenant Robert Quinn

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. 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 Exhibits:

1. Current Collective Bargaining Agreement.
2. Shift bid documentation of Trooper Debra Winters.
3. Grievance documents.

For the Association:

None other than those marked as joint, above, at this time.

For the State:

None other than those marked as joint, above, at this time.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be 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

1. The parties' representatives shall meet, or otherwise confer, on or before **February 10, 2006** in order to compose a mutual statement of agreed facts and exhibits. The parties' representatives shall memorialize those facts and exhibits upon which they can so stipulate and file those documents with the PELRB no later than **February 15, 2006**. The parties' representatives are otherwise encouraged to meet and/or confer with each other for the purpose of good faith exchange of information and documents in this matter.
2. 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.
3. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.
4. 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:

March 2, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 6th day of January, 2006.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

James W. Donchess, Esq.

Marta A. Modigliani, Esq.