



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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SEA, SEIU Local 1984 AFL-CIO		*
		*
Complainant		*
		*
v.		*
		*
State of New Hampshire		*
Respondent		*
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Case No: S-0428-3

Decision No. 2006-148

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The SEA, SEIU Local 1984 (hereinafter "the Association") filed an unfair labor practice complaint on July 26, 2006 alleging that the State of New Hampshire (hereinafter "the State") committed an unfair labor practice. The claim relates to Article 5.8.1 of the parties' collective bargaining agreement ("CBA"), which concerns the agency fee. The Association claims it provided an auditor's report to the State concerning chargeable and non-chargeable expenses in support of the Association's computation of the appropriate agency fee to be effective July 1, 2006. The Association asserts that the State has improperly delayed in evaluating the Association's computation and has failed to implement the agency fee increase.

The Association requests that the PELRB find that the State has committed an unfair labor practice in violation of 273-A:5 I (h) and order the State to: 1) comply with Article 5.8.1 of the Parties' Collective bargaining agreement; 2) reimburse SEA for agency fees not collected as a result of their non-compliance with Article 5.8.1; 3) award the Association attorney's fees and costs for the filing of this complaint; and 4) grant such other and further relief as may be deemed just.

The State filed its answer on August 10, 2006 and essentially admits the factual chronology recited in the petition and states that it is analyzing the Association's request for an agency fee increase and will respond as soon as that process is concluded. The State requests that the PELRB: 1) dismiss the Association's complaint; 2) deny the relief sought by the Association; and (3) grant such other relief to the State as deemed just and appropriate under the circumstances.

The undersigned-hearing officer conducted a pre-hearing conference at PELRB offices, Concord, New Hampshire on September 13, 2006.

PARTICIPATING REPRESENTATIVES

For the Association: Lorri Hayes, Esq.

For the State: Michael K. Brown, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Has the State violated Article 5.8.1 of the CBA and RSA 273-A:5 I (h) by failing to respond to the substance of the Association's computation of the agency fee amount and by failing to implement the agency fee as the Association has demanded?
- (2) Should the agency fee be implemented retroactive to July 1, 2006 (or some other date)?
- (3) Is the State chargeable for any delay in implementing the agency fee and liable to the Association for all lost fair share payments not paid to the Association on account of any such delay?
- (4) Does the PELRB lack jurisdiction to decide some or all of these questions?

WITNESSES

For the Association:

1. Sara J. Willingham, State Director of Personnel.
2. Kathy Desjardin, Association business officer.

For the State:

1. Karen Levchuk, Director Division of Personnel.
2. Sara J. Willingham, Manager Employee Relations, Division of Personnel.

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. July 1, 2005 to June 30, 2007 Collective Bargaining Agreement.
2. May 11, 2006 Letter from Lorri Hayes to Karen Levchuk and Sara Willingham.
3. May 26, 2006 Letter from Karen Levchuk to Lorri Hayes.
4. June 30 2006 Letter from Lorri Hayes to Sara Willingham.
5. July 20, 2006 Letter from Sara J. Willingham to Lorri Hayes.

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 being set aside for this hearing is one-half 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 are scheduled to meet on September 15, 2006 to attempt to reach agreement on issues in the case. On or before September 22, 2006 the parties shall file with the PERLB a joint statement, if possible, or separate statements, if necessary, detailing the issues remaining in the cases following the September 15, 2006 meeting. The statement(s) shall be specific, and shall include issues such as: 1) whether the parties have reached agreement on the amount of the agency fee; 2) if the agency fee is in dispute, whether either party contends that the PELRB lacks jurisdiction to determine the amount of the agency fee; 3) whether the Association seeks to charge the State for any alleged delay in implementing the agency fee; and 4) whether any party contends the PELRB lacks jurisdiction to decide the issue of alleged delay and the amount, if any, the State should be charged on account of any delay.
2. The parties' representatives shall meet, or otherwise confer, on or before September 30, 2006 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 that document, a long with any corresponding exhibits, with the PELRB no later than, October 4, 2006.

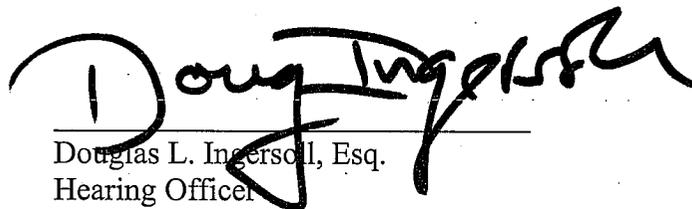
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise 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. 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:

October 10, 2006 @ 9:30 A.M.

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

So ordered.

Signed this 14th day of September, 2006.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:
Lorri Hayes, Esq.
Michael K Brown, Esq.