



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Erika Randmere, Appeal Tribunal Chair, NHES

Complainant

v.

State of New Hampshire & SEA/SEIU Local 1984

Respondents

Case No. S-0306-7

Decision No. 2008-011

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

On December 6, 2007, Erika Randmere, the Appeal Tribunal Chairman of the New Hampshire Department of Employment Security, filed an unfair labor practice complaint alleging that the State and the State Employees' Association of New Hampshire, Inc., Local 1984 SEIU ("SEA") violated RSA 273-A:5, I (h) and RSA 273-A:5, II (f) and the parties' collective bargaining agreement on account of agency fee calculation and collection. Ms. Randmere contends that the State has collected an improperly calculated agency fee and distributed these funds to the SEA, and the SEA has failed to return the improperly calculated and collected agency fee amount to bargaining unit employees.

According to the complaint, the SEA has failed to recalculate the proper agency fee amount as required by an arbitration award in which the arbitrator determined that the then-existing agency fee failed to correctly compute the pro-rata share of expenditures germane to collective bargaining for 2005-2006. Ms. Randmere complains that she has filed 4 grievances related to this matter with the State. She contends that the State's response to her level II and level III grievances were insufficient because she was not reimbursed for the alleged improper agency fee deductions and that she has not received any response from the State to her level I and level IV grievances.

As remedies, Ms. Randmere requests that the PELRB 1) order the State and/or the SEA to provide written notification to all applicable agency fee payers regarding the miscalculation of the agency fee; 2) order the State and/or the SEA to reimburse all applicable monies deducted

erroneously due to the miscalculation of the agency fee, and 3) order the State to immediately cease the deduction of the agency fee until the SEA accurately calculates the agency fee.

The SEA filed its answer denying the charges on December 21, 2007. The SEA contends that it has abided by all contractual, legal and constitutional requirements concerning the deduction of the agency fee at issue. Furthermore, the SEA argues that the PELRB lacks jurisdiction over this complaint because the matter is properly before an arbitrator. The SEA states that the parties are still awaiting the final decision of the arbitrator. Consequently, the SEA maintains that the PELRB lacks the authority to grant any of the requested remedies. Finally, the SEA asserts that the complaint fails to allege any unfair labor practice in violation of RSA 273-A:5, II.

Accordingly, the SEA requests that the PELRB: 1) dismiss the complaint; and 2) grant such other relief as may be required by law.

On January 8, 2008 the State filed its answer denying the charges. The State previously obtained an extension of time to file its answer. The State contends that it has abided by all contractual, legal and constitutional requirements concerning the deduction of the agency fee at issue. Furthermore, the State argues that the PELRB lacks jurisdiction over this complaint because the matter is properly before an arbitrator. Consequently, the State maintains that the PELRB lacks the authority to grant any of the requested remedies. Finally, the State asserts that the Complainant has failed to allege any unfair labor practice in violation of RSA 273-A:5, II.

Accordingly, the State requests that the PELRB: 1) dismiss the complaint; and 2) order such other and further relief as justice may require.

The undersigned hearing officer conducted a pre-hearing conference at the PELRB in Concord on January 23, 2008.

PARTICIPATING REPRESENTATIVES

For the Complainant: Erika Randmere

For the State: Michael K. Brown, Esq.

For the SEA: Glenn R. Milner, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether the SEA and or the State violated RSA 273-A:5, I (h) and RSA 273-A:5, II (f) and the parties' collective bargaining agreement on account of the manner in which the agency fee was calculated and collected?
2. Whether the PELRB lacks jurisdiction over the complaint on account of the arbitrability of Ms. Randmere's claims, including the arbitration which has taken place to date, and/ or for other reasons?

2. Whether the PELRB lacks jurisdiction over the complaint on account of the arbitrability of Ms. Randmere's claims, including the arbitration which has taken place to date, and/ or for other reasons?

WITNESSES

For the Complainant:

1. Erika Randmere, Appeal Tribunal Chairman, NHES

For the State:

1. Sara Willingham, Manager of Employee Relations, State of NH

For the SEA:

1. Kathy Desjardin, Business Manager, SEA
2. Gary Smith, President, SEA
3. Any and all witnesses contained on Complainant's witness list not called by Complainant during the presentation of her case and any necessary rebuttal witness.

All 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.

EXHIBITS

For the Complainant:

1. SEA letter, dated March 8, 2007.
2. SEA Auditor's report, dated March 8, 2007.
3. State of NH letter to SEA, dated May 2, 2007.
4. Payroll stub.
5. Grievance I filed by E. Randmere, dated June 13, 2007.
6. Grievance II filed by E. Randmere, dated June 22, 2007.
7. State of NH letter, dated July 18, 2007.
8. Grievance III filed by E. Randmere, dated July 23, 2007.
9. State of NH letter, dated September 10, 2007.
10. Grievance IV filed by E. Randmere, dated September 18, 2007.
11. Arbitration Award: SEA v. 53 Agency Fee Objectors, AAA Case No. 11673-01647-06 (Buckalew, 2006).

For the State:

1. All related correspondence between the SEA and the State.
2. All exhibits identified on the SEA's Pre-Hearing Worksheet.

For the SEA:

1. Collective Bargaining Agreement, effective 2005-2007
2. Arbitration Award: SEA v. 53 Agency Fee Objectors, AAA Case No. 11673-01647-06 (Buckalew, 2006)
3. Any and all pleadings in this matter.
4. Any and all documents filed as exhibits to pleadings.
5. Any document or exhibit included in the Complainant's exhibit list not otherwise introduced by the Complainant.
6. Any and all documents required for impeachment purposes.

Additional exhibits filed at the pre-hearing conference:

1. January 11, 2008 email to Erika Randmere from Claire Connelly
2. January 10, 2008 letter from SEA to William Weaver
3. December 20, 2007 Arbitration Final Award

All 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 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 3 hours. 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 20 days prior to the date of the evidentiary hearing.

DECISION

1. At the pre-hearing conference the parties generally agreed that the SEA and the State are actively working on matters which will soon lead to a reimbursement of agency fee monies to affected State employees in a manner that will likely be acceptable to Ms. Randmere and which has the potential for resolving the concerns and issues she has raised in her complaint.
2. Additionally, Ms. Randmere advised that she intends to have counsel represent her at hearing, and counsel is not available on the currently scheduled hearing date.

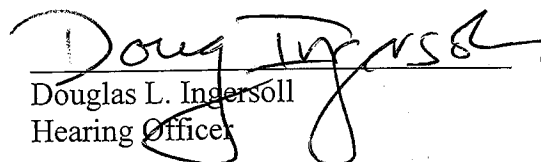
3. Given these circumstances, a further pre-hearing conference will be conducted on March 26, 2008 at 9:00 a.m. and the hearing is rescheduled to April 1, 2008 at 9:30 a.m. The parties confirmed that they are available for pre-hearing and hearing on these dates, with the exception of counsel for Ms. Randmere, who may not be available for pre-hearing on March 26, 2008. On or before February 15, 2008 Ms. Randmere shall notify the board and the parties of counsel's availability for further pre-hearing on March 26, 2008.
4. In the event this matter resolves by agreement, the parties shall jointly and promptly notify the board in writing, failing which this matter will proceed as scheduled.
5. Unless this matter has resolved by agreement, the parties' representatives shall meet, or otherwise confer, on or before March 15, 2008, to attempt to stipulate to the submission of this case in writing or, in the alternative, without the need for formal testimony. The parties shall file forthwith a joint statement setting forth any such agreement and include a proposed schedule for the parties' filings.
6. If the matter is to proceed to hearing, the parties or their counsel shall meet, or otherwise confer, on or before March 15, 2008 in order to agree on joint exhibits and to compose a mutual statement of agreed facts. The parties' shall file all joint exhibits, factual stipulations, and other exhibits properly marked for identification on or before March 26, 2008.
7. Counsel shall file any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, at least 5 days prior to the scheduled hearing date.
8. The parties shall file any additional preliminary, procedural or dispositive motions no later than March 15, 2008, and any responses or objections thereto shall be filed on or before March 26, 2008.

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:

April 1, 2008 @ 9:30 a.m.

So ordered.

January 28, 2008.


Douglas L. Ingersoll
Hearing Officer

Distribution:
Erika Randmere
Michael K. Brown, Esq.
Glenn R. Milner, Esq.