

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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| Erika Randmere, Appeal Tribunal Chair, NHES | * | |
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| Complainant | * | Case No. S-0306-7 |
| v. | * | |
| | * | Decision No. 2008-072 |
| State of New Hampshire & SEA/SEIU Local 1984 | * | |
| | * | |
| Respondents | * | |
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SUPPLEMENTAL PRE-HEARING MEMORANDUM AND ORDER

The undersigned hearing officer conducted a second pre-hearing conference at the PELRB in Concord on March 26, 2008. See PELRB Decision No. 2008-011 for the original pre-hearing order, issued following the initial pre-hearing conference held on January 23, 2008.

PARTICIPATING REPRESENTATIVES

For the Petitioner: Erika Randmere

For the State: Michael K. Brown, Esq.

For the SEA: Glenn R. Milner, Esq.

BACKGROUND AND DECISION

This case relates to the SEA's calculation and collection of an agency fee. An arbitration proceeding concerning the computation of the agency fee resulted in an initial arbitrator's award on October 16, 2007 and a final award on December 20, 2007. Ms. Randmere filed her complaint on December 6, 2007 claiming, in substance, that State employees have not been reimbursed for excessive agency fee deductions and that the State has never notified agency fee payers of the basis for the reduction in the amount of the agency fee deduction. Ms. Randmere asserts that these circumstances constitute a violation of RSA 273-A:5, I (h) and 5, II (f) and a breach of the parties' collective bargaining agreement.

As remedies Ms. Randmere requests that: 1) the State of New Hampshire and/or the State Employee's Association of New Hampshire, Inc. provide(s) written notification to all agency fee payers regarding the miscalculation of the agency fee; 2) the State of New Hampshire and/or the State Employee's Association of New Hampshire, Inc. reimburse all monies deducted erroneously from wages due to the miscalculation of the agency fee; and 3) the State of New Hampshire immediately cease the deduction of the agency fee from the wages of agency payers until the SEA accurately calculates the agency fee.

Both the SEA and the State contend that they have abided by all contractual, legal and constitutional requirements concerning the deduction of the agency fee at issue and that the PELRB lacks jurisdiction over this complaint because the matter is properly before an arbitrator. Consequently, the SEA and the State maintain that the PELRB lacks the authority to grant any of the requested remedies. Finally, the SEA and the State assert that the Complainant has failed to allege any unfair labor practice in violation of RSA 273-A:5, II.

At the initial pre-hearing conference the parties anticipated the issues raised in Ms. Randmere's complaint might resolve on account of certain activity and undertakings of the parties and an April 1, 2008 hearing was established on that basis. As of March 26, 2008, the parties' situation is as follows:

1. Ms. Randmere has been fully reimbursed for the excess agency fee amounts deducted from her paycheck arising from the SEA's error in its original computation of the agency fee amount.
2. As to other State employees who pay an agency fee, counsel for the SEA confirms that the SEA is proceeding to reimburse all other agency fee payers from whom the excess agency fee amounts were collected due to the SEA's error in its original computation of the agency fee amount, even though the SEA does not believe it is contractually obligated to do so.
3. The Union has not issued the amended *Hudson* notice referenced in the arbitrator's Amended Opinion and Award, issued on December 20, 2007. The arbitrator's final award concludes that the SEA's November 2, 2007 submission of a revised auditor's report containing an adjusted agency fee amount states the proper pro rata share of relevant chargeable expenditures.
4. The SEA's reimbursement of the excess agency fee amounts collected do not resolve Ms. Randmere's claims for reimbursement because she believes she is entitled to a further reimbursement of 100% of the agency fee amount collected between March 8, 2007 and May 24, 2007. March 8, 2007 is the date when the SEA advised Ms. Randmere in writing of its error in calculating the agency fee, and May 24, 2008 is the date when the State implemented the reduced agency fee deduction. Ms. Randmere believes that the collection of the agency fee should have been suspended during this time period.
5. Ms. Randmere's proffered exhibits in this case include the grievance she filed on June 13, 2007 concerning the agency fee error. In the grievance Ms. Randmere requests a written


explanation from the State as to the basis for the reduction in the agency fee amount and reimbursement to all agency fee payers in the amount of the agency fee deducted in error.

6. Ms. Randmere's June 13, 2007 grievance did not seek reimbursement of 100% of the agency fee deducted between March 8 and May 24, 2007 nor is this relief expressly requested in her complaint.
7. In her complaint Ms. Randmere cites Article 14.1.5.1 and 5.8.1 d of the 2005-2007 collective bargaining agreement to support her claims. Article 14.1.5.1 deals with grievance procedure and concerns the process for proceeding to arbitration. Article 5.8.1 concerns the circumstances in which the State "shall refuse to enforce" the agency fee requirement.

As discussed at the pre-hearing, the deadline for filing motions to dismiss is extended to March 31, 2008 at 4:30 p.m. The hearing on the merits in this matter will be held as scheduled on April 1, 2008 @ 9:30 a.m. The State and/or the SEA may ask the board to consider any pending motions to dismiss at the outset of the merits hearing.

So ordered.

March 27, 2008.



Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

Erika Randmere

Michael K. Brown, Esq.

Glenn R. Milner, Esq.