



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Pamela Blake & SEA of NH, Inc.

Complainant

v.

State of NH Department of Safety

Respondent

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Case No. S-0393-2

Decision No. 2008-109

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Pamela Blake & SEA of NH, Inc. (the "complainants") filed an unfair labor practice complaint on March 31, 2008 alleging that the State of New Hampshire, Department of Safety (the "State") committed an unfair labor practice in violation of RSA 273-A:5 I (a) (c) (g) and (h) when it terminated Pamela Blake on October 1, 2007. The complainants contend Ms. Blake, a former 30 year State employee and union steward who resumed State employment on a part time basis in the fall of 2006, was terminated for engaging in union activity which consisted of her discussions with a probationary co-employee concerning the co-employee's Weingarten rights and other matters in connection with a disciplinary meeting. The complainants also contend the termination was in retaliation for Ms. Blake's long union history and activity and violated the implied covenant of good faith and fair dealing contained in the parties' collective bargaining agreement.

The Complainant has requested as remedies that the PELRB 1) reinstate Ms. Blake with full back pay and benefits and make the complainants whole; 2) order the State to cease and desist from such behavior in the future; and 3) issue such other orders as necessary to protect the interests of the charging parties.

The State filed its answer on April 15, 2008 denying the charge of unfair labor practice. The State also filed a Motion to Dismiss on that date. The State contends that Ms. Blake was dismissed for misconduct associated with her work, including conducting personal business during work hours, shutting down her computer early and ceasing to do work prior to the end of the business day, and getting involved in confidential personnel matters during work hours that were none of her concern. The State asserts that Ms. Blake was not a union steward or counselor

during her part time employment, and that the State was unaware of her status as a union member.

The State requests that the PELRB: 1) declare that the State did not commit an unfair labor practice; 2) deny the relief requested by Ms. Blake in paragraph 12 of the Complaint; 3) dismiss the complaint; and 4) grant any further relief that may be just and proper.

The undersigned Hearing Officer conducted a pre-hearing conference on May 13, 2008, at 1:30 p.m. at the offices of the Public Employee Labor Relations Board in Concord.

PARTICIPATING REPRESENTATIVES

For the Complainant: Michael C. Reynolds, Esq.

For the State: Sheri J. Kelloway, Esq.

ISSUES FOR DETERMINATION BY THE BOARD

Whether the State improperly terminated Ms. Blake's employment in violation of RSA 273-A:5 I (a) (c) (g) and (h)?

WITNESSES

For the Complainant:

1. Pamela Blake, terminated employee
2. Virginia Beecher, Director, DMV
3. Erin Dubreuil, co-employee
4. Kelly Brudniak, supervisor

For the State:

1. Virginia Beecher, Director, DMV
2. Kelly Brudniak, supervisor
3. Thomas Manning, Manager of Employee Relations
4. Carrie Foote, co-employee
5. Aimee Adams, co-employee
6. Karen Patterson, supervisor
7. Erin Dubreuil, co-employee

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

For the Complainants:

1. 10/15/07 PAB appeal w/attached 10/1/07 & 10/5/07 e-mails
2. 2/27/07 PAB Decision
3. 3/28/08 PAB Motion for Reconsideration
4. Collective Bargaining Agreement

For the State:

1. 10/1/07 e-mail from Pamela Blake to Virginia Beecher
2. 10/5/07 e-mail from Virginia Beecher to Pamela Blake
3. Pleadings from Personnel Appeals Board, Docket # 2008-T-003
4. Relevant Portions of the CBA

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 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 10 days prior to the date of the evidentiary hearing.

DECISION

1. "Parties" means the named complainant and respondent or the counsel/representative appearing in the case. Unless otherwise ordered, the parties shall meet, or otherwise confer, on or before May 29, 2008 and attempt to reach a stipulation on presenting the instant case by written submission, or, in the alternative, without the need for formal testimony. The parties shall document any such agreement by immediately filing a joint statement which includes a proposed schedule for the parties' fact stipulation filings and briefs, if any.

2. If the matter is to proceed to a hearing before the Board, the parties' shall meet, or otherwise confer, on or before May 29, 2008 in order to compose a mutual statement of agreed facts. The parties shall file their fact stipulations prior to the date of the hearing.

3. The parties shall file any amendments to, or deletions from, their Witness and Exhibit lists at least 5 days prior to the scheduled hearing date. The parties 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. On or before May 23, 2008 the State shall provide to the complainants' counsel detail concerning the allegations in paragraph 4 of the State's answer concerning Ms. Blake's alleged misconduct, including approximately when and how often specific misconduct occurred and when and how such misconduct was reviewed with Ms. Blake.


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 3, 2008 at 9:30 a.m.

at the offices of the Public Employee Labor Relations Board in Concord.

So ordered.

May 15, 2008.



Douglas L. Ingersoll, Esq.
Staff Counsel/Hearing Officer

Distribution:
Michael C. Reynolds, Esq.
Sheri J. Kelloway, Esq.